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56th Congress, 1st Session. | SENATE. | Document No. 392.

MEMORIAL OF THE EASTERN OR EMIGRANT CHEROKEES.

May 22, 1900.—Referred to the Committee on Indian Affairs and ordered to be printed.

Mr. Morgan presented the following

MEMORIAL OF THE EASTERN OR EMIGRANT CHEROKEES, SO CALLED, PRAYING FOR THE PAYMENT TO THEM PER CAPITA OF THE TRUST FUND DUE UNDER THE NINTH ARTICLE OF THE TREATY OF 1846, AND APPROPRIATED TO THEM JULY 2, 1836, AND FOUND DUE BY THE AWARD OF THE EXECUTIVE DEPARTMENT OF THE UNITED STATES IN PURSUANCE OF THE CHEROKEE AGREEMENT OF DECEMBER 19, 1891, AND THE ACT OF CONGRESS OF MARCH 3, 1893. (27 STATS., 643.)

May 17, 1900.

To the honorable the Senate and House of Representatives in Congress assembled:

Your memorialists, the Eastern or Emigrant Cherokees of the Indian Territory, relying firmly on our vested rights under the accounting rendered by the executive department April 28, 1894, as set forth in Senate Docs. Nos. 215, 282, 305, 308, Fifty-sixth Congress, first session, and making our argument in such memorials a part hereof, and addressing this memorial particularly to the intent and true construction of the treaty of 1835 and the acts of Congress relative thereto, and the treaty of 1846 in settlement of the Cherokee difficulties, and particularly dealing with every adverse suggestion known to your petitioners, your memorialists respectfully submit the following statement:

SYNOPSIS OF ARGUMENT OF EASTERN OR EMIGRANT CHEROKEES.

I. Article 8, treaty 1828, obliges the United States to pay for removal and subsistence of all Cherokees from the east to the west.

II. This was the fixed policy of the United States with regard to all neighboring tribes; e. g., Creeks, Seminoles, Choctaws, Shawnees, etc.

III. The attempt to deduct the cost of removal and subistence from $5,000,000 fund offered by Senate for lands and possessions resulted in rejection of such proposed treaty October 23, 1835, even the leaders of the treaty party, Ridge and Boudinot, opposing.

IV. The treaty party, consisted of a few prominent Cherokees, who were paid over $30,000 for their services, in negotiating the treaty of 1835. They made treaty, however, on express condition that the question whether cost of removal was intended to be charged to the $5,000,000 fund should be left to the United States Senate.

V. By supplementary articles to treaty, the United States Senate decided it did not intend $5,000,000 fund should include cost of removal.

VI. Congress, July 2, 1836, appropriated $600,000 to cover cost of spoliations and removal, on an estimate that said sum was more than sufficient to pay removal and leave a surplus for the educational fund (Article 3, supplement).

VII. The War Department (after treaty of 1835) sustained the construction that under the treaty of 1828 subsistence was chargeable to the United States on November 18, 1836, in advising Cherokee Indian Agent B. F. Curry.

VIII. This construction was fully justified, because Article 8, treaty 1828, was not modified by the treaty 1835, as construed by the Senate and Congress, and because the purchase money could not be rightfully used to pay a subsisting obligation of the United States.

IX. The War Department, September 12, 1837, instructed Van Horne, the enrolling agent, to advise the Cherokees they would be moved and subsisted at the expense of the United States, and on the terms promised by Andrew Jackson's letter, 1835, which, among other things, promised them $150 per capita. The payment of the Slade-Bender award in addition to the previous per capita payment of 1852, excluding interest, would only make a total per capita payment of $124.78.

X. That "removal" was chargeable to the United States is further shown by the letter of the Secretary of War, written to John Ross and others, May 18, 1838, expressing the opinion that the United States ought to defray the expense of removal of the Cherokees.

XI. It is further shown by the letter of the Secretary of War to Gen. Winfield Scott sending him copy of the proposals made to Ross, and advising him to make arrangements with Ross so as to protect, not the Cherokees trust fund, but the interests of the United States, and avoid unnecessary and useless expenditure, but arrange for a comfortable removal.

XII. It is further shown by the estimate of the Secretary of War to Congress for a sum sufficient to pay the entire cost of the removal and subsistence of every Cherokee under date May 25, 1838.

XIII. It is further shown by the resolution of the House of Representatives asking for such estimate, on May 23, 1838.

XIV. It is further shown by the appropriation of June 12, 1838, made by Congress on such estimate, providing a sum sufficient, as Congress then believed, to pay the whole cost of the removal and subsistence of the entire Cherokee people, to wit, $1,047,017.

XV. It is further shown by the resolutions of the Cherokee Council of July 21, July 26, and of August 1, 1838, in which it is manifest that they understood that their self-emigration, through their own leaders, was based on a special understanding with the Secretary of War, as proposed to John Ross, and that it was to be paid for out of the appropriations made or to be made by the United States for that purpose.

XVI. It is certain they did not authorize any contract to be made for self-emigration under the treaty of 1835, but that they bitterly repudiated such treaty and its alleged trust fund, by innumerable protests and petitions extending from 1836 to 1846, and expressly at the very time and date under consideration when the Ross-Scott contract was made, to wit, July 21, 26, and August 1, 1838.

XVII. If they had been emigrating themselves under the treaty of 1835, by its terms they would have been restricted to $20 each for removal and $33.33⅓ each for subsistence.

XVIII. The United States, as trustee, can not exceed the sum prescribed by the treaty for removal and subsistence, or permit any extravagance to consume the trust fund due to the individual Cherokee per capita.

XIX. The theory that the Cherokees authorized the John Ross contract, and are responsible for any extravagance therein, and must pay therefor out of the trust fund in the hands of the United States is a manifest error.

(*a*) Because the Cherokee Nation under John Ross authorized no contract under such treaty. They repudiated the treaty of 1835, and the trust fund arising thereunder, at the time such contract was made, during its execution, at its completion, and for years after the matter was closed.

(*b*) More than that, they understood on July 21, July 26, and August 1, 1838, and November 11, 1840, as shown by their resolutions of these dates, that the cost of such removal would be paid out of the Treasury of the United States.

(*c*) It is further shown by their demanding indemnity for the country pretended to have been ceded in 1835 in their numerous petitions, an indemnity which was promised in 1841 by President Tyler after the settlement of the amount due Ross under his contract, and insisting on indemnity until the treaty of 1846 was made.

XX. It is said the contract with Ross was extravagant, and that the removal could have been made for less money under contract. If the contract was extravagant it would not relieve the United States from paying the sum promised nor justify charging extravagance to cestui qui trust. But it was not extravagant from a government standpoint. It would have cost the United States twice as much as the John Ross contract to have delivered these people in Indian Territory by military force. They were intensely excited. The four adjacent States apprehensive of a great Indian war. The Ross contract gave peace to four States, and caused the immediate dismissal of a large army, with its vast expense. General Scott explains a desolating drought immensely increased the expense of the Ross contract, and on his testimony it was paid. Over 600 burials helped to delay the thirteen Ross detachments. Any complaints against the justice of this contract must be silenced by the act of President Tyler in ordering it paid.

XXI. Commissioner Medill asserts the $600,000 and $1,047,000 was an increase in the purchase money of the Cherokee lands and a compromise with the Cherokees. This is a gross, if not willful, error, contradicted by the history above recited and supported by no good reason.

(*a*) Commissioner Medill offers the correspondence preceding the proposed treaty of October 23, 1835, wherein it was proposed to deduct the cost of removal from the price of the lands to justify his position. This is completely disposed of by the fact that such proposed treaty was rejected even by Ridge & Boudinot, on this very account, among others.

(*b*) Commissioner Medill quotes Senator White's report to support his position. Senator White calls the appropriation of June 12, 1838, a voluntary grant, and says the amount paid the Cherokees was liberal under the treaty of 1835, *as the difference in value between the countries exchanged by that treaty*. The answer to this is that Senator White was not passing on the points involved, and had no intention to express an opinion as to the construction of the treaty of 1828 or 1835, but gave a bad reason for a good action, in supporting the estimate of the Secretary of War. He over estimated what the Eastern Cherokees received under that treaty by 14,000,000 acres of land, as there was no exchange of land by the treaty of 1835. His report concedes that he was not informed on the treaty of 1835 in various particulars, e. g., the $600,000 fund, the commutation of annuity, etc.

(*c*) Commissioner Medill fails to quote the very important report of the Committee on Indian Affairs of February 19, 1847, which had this exact point under consideration, and which found in favor of the Cherokees. (Jarnigan.)

(*d*) Commissioner Medill fails to quote the report made by the special commission—Adjutant-General Jones, Colonel Mason, and Governor Butler—to examine into the complaints of the Cherokees, and who found in favor of Cherokees January 15, 1845, on very points at issue in elaborate report.

(*e*) Commissioner Medill fails also to quote the numerous reasons hereinabove set forth, which would have forced him to a different conclusion had he considered them.

(*f*) His report shows numerous errors, as shown in detail hereinafter, the juggling of the accounts, etc. Yet on this report the Auditor and Comptroller, taking him as their declared authority, made the error of charging trust fund with removal.

(*g*) Congress corrected a part of this (Commissioner Medill's) error on September 30, 1850, as to subsistence; a part on February 27, 1851, as to sums paid Government agents, and the Interior Department corrects the last error, as to "removal," in the Slade-Bender report of April 28, 1894, the refunding of which to the trust fund, with interest, is now demanded.

(*h*) Commissioner Medill quotes General Scott and draws the inference that General Scott had advised Cherokees that the United States would use trust fund after exhaustion of appropriation for removal. General Scott in letters of August 1 and 2 refers only to appropriations for removal, and only spoke to Ross of trust fund November 15, 1835, one hundred and seven days subsequent to the contract of August 1, 1838.

ARGUMENT.

It is impossible to comprehend the treaty of 1835 in its relations to the Indians and to the United States except in the light of its history.

On December 29, 1835, the Cherokee Nation owned the following land, which was ceded by that treaty to wit:

	Acres.
In Tennessee	949,760
In Georgia	4,609,280
In Alabama	1,611,520
In North Carolina	711,680
A total of acres	7,882,240

(Page 378, History of the Cherokee Indians, Bureau of Ethnology.)

On this land the Cherokees had over $2,000,000 in improved farms, houses, orchards, mills, etc., which with the land they thought worth $20,000,000 (p. 96, Senate Doc. No. 120, Twenty-fifth Congress, second session). The Cherokees estimated the land at 10,000,000 of acres; it was splendidly watered, fine climate, had great forests of valuable timber, inexhaustible quarries of marble; but above all, at that time there was much excitement over the gold mines in the Cherokee country. They say in their memorial (p. 40):

> The riches of the gold mines are incalculable. Some of the lots of 40 acres of land, embracing gold mines which have been surveyed and disposed of by lottery under the authority of Georgia (with the incumbrance of the Indian title), have been sold for upward of $30,000, etc. (House Doc. No. 286, Twenty-fourth Congress, first session, vol. 7, p. 13.)

The right of the Cherokees was established over the violent laws of Georgia, which provided for distributing the Cherokee lands among the citizens of Georgia, depriving the Cherokees of every civil right, etc., by the Supreme Court of the United States in Worcester *v.* Georgia. This decision declared the legislation of Georgia unconstitutional and void and the Cherokee treaties in full force.

Georgia refused to submit to the decision of the Supreme Court on the ground that she was a sovereign independent State.

PRESIDENT JACKSON'S DILEMMA.

President Jackson was in a serious dilemma—either to coerce Georgia to respect the Federal treaty with the Cherokees, break faith with the Cherokees, or make a new treaty with them.

J. F. Schermerhorn and Governor William Carroll were authorized to negotiate a new treaty March, 1835, after various propositions had failed. General Carroll being sick, Mr. Schermerhorn assumed the responsibilities of the negotiations alone. He was limited by a resolution of the United States Senate of March 6, 1835, to an offer of $5,000,000 for their lands and possessions. This the Cherokees were not willing to accept. Meeting with no substantial encouragement, he suggested, in a communication to the Secretary of War on September 10, 1835, two alternative propositions, by either of which a treaty might be secured.

These propositions were (1) that the appraising agents of the Government should ascertain from influential Cherokees their own opinion of the value of their improvements, and promise them the amount if this estimate should be in any degree reasonable and if they would take a decided stand in favor of the treaty and conclude the same; (2) to conclude the treaty with a portion of the nation only should one with the whole be found impracticable, and compel the acquiescence of the remainder in its provisions. He was at once advised, on September 26, 1835, of the opposition of the President to any such action. He must make no particular promise to any individual, high or low, to gain his cooperation. The interest of the whole must not be sacrificed to the cupidity of a few, and if a treaty was concluded at all it must be one that would stand the test of the most rigid scrutiny. (History Cherokee Indians, Ethnological Bureau, p. 280.)

RED CLAY COUNCIL.

On October 23, 1835, at Red Clay, the Cherokee people in full council rejected the Ridge treaty, to which much reference has been made and which proposed that removal and subsistence should be deducted from the $5,000,000 fund. Even John Ridge and Elias Boudinot went with their people against this treaty. Mr. Schermerhorn on his own account, and contrary to the Cherokee law which placed the calling of the council in the hands of the principal chief, called a so-called council at Echota, on December 22, 1835. Only a few were present. The Cherokees' regular council having sent John Ross and a delegation to Washington, to negotiate with the Government, Schermerhorn prevented the Ross delegation being received at Washington, and drew up a treaty of December 29, 1835, in which he disobeyed his instructions from the President, using not only bribes and threats but other unfair means. He reports himself that he told the Indians that their country "has already been virtually sold by the chiefs" (p. 461, Senate Doc. No. 120, Twenty-fifth Congress, second session.)

He says, in regard to making a treaty, October 27, 1835 (p. 484, Senate Doc. No. 120):

> The only hope I have of accomplishing it now is the fear of the Indians of Georgia legislation. Alabama and Tennessee, I think, will also pass some wholesome laws to quicken their movement.

With the small meeting which Schermerhorn collected at Echota he concluded a treaty on the 29th of December, 1835, with a delegation composed of John Ridge, Elias Boudinot, Archilla Smith, etc., who represented some three hundred people in favor of emigration and which appears on the face of the treaty was not the delegation authorized by the Cherokee people.

On December 31, 1835, Mr. Schermerhorn says:

> The whole of the expenditures since I have been in the nation negotiating, not including my own services, etc., or that of the secretary, amounting to about $3,000; and I believe all the accounts are in and settled up to this day, having made myself personally responsible to the disbursing agent for all advances, above the money in his hands, for this service (p. 496, Senate Doc. 120).

In point of fact. J. F. Schermerhorn paid the following persons for services and expenses in negotiating and concluding the treaty with the Cherokee Indians, dated December 29, 1835.

W. H. Underwood, attorney for the Cherokee Nation	$472.00
Do	298.75
James Starr	1,681.00
Andrew Ross	2,760.00
James A. Foreman	1,315.00
John Gunter	1,315.00
Longshell Turtle	1,315.00
Joshway Rogers	2,175.00
John Smith	2,175.00
William S. Coody	1,407.00
E. Boudinot	1,550.00
John A. Bell	1,200.00
William Rogers	1,310.00
Robert Sanders	1,200.00
Tayeskey	1,200.00
James Foster	1,200.00
John Fields	1,300.00
Major Ridge	1,280.00
George Welch	1,200.00
John Ridge	2,054.87
Stand Watie	1,419.00
James Fields	1,200.00

He acted as attorney for Boudinot, Bell, Rogers, Sanders, Tayeskey, Foster, Fields, Major Ridge, George Welch, John Ridge, Stand Watie, James Fields, and received for them over $16,000. He thus paid to the leaders of the so-called treaty party something over $30,000 for their "services and expenses" in negotiating and concluding that treaty. (See p. 1034, Senate Doc. No. 120, Twenty-fifth Congress, Second session, and Senate Doc. No. 199, Twenty-fifth Congress, Third session, vol. 3.)

Maj. William M. Davis, an agent of the Secretary of War in the Cherokee country, on March 5, 1836, informed the Secretary of War as follows (p. 27):

> I conceive that my duty to the President, to yourself, and to my country reluctantly compels me to make a statement in relation to a meeting of a small number of Cherokees at Echota last December, who were met by Mr. Schermerhorn and articles of a general treaty entered into between them for the whole Cherokee Nation. * * *
>
> I should not interpose in the matter at all, but I discover that you do not receive impartial information on the subject; that you have to depend upon the ex parte, partial, and interested reports of a person who will not give you the truth. I will

not be silent when I see that you are about to be imposed on by a gross and base betrayal of the high trust reposed in Rev. J. F. Schermerhorn by you. * * *

Sir, that paper * * * called a treaty is no treaty at all because not sanctioned by the great body of the Cherokees and made without their participation or assent. I solemnly declare to you that upon its reference to the Cherokee people it would be instantly rejected by nine-tenths of them, and, I believe, by nineteen-twentieths of them. There were not present at the conclusion of the treaty more than 100 Cherokee voters, and not more than 300 including women and children, although the weather was everything that could be desired. The Indians had long been notified of the meeting, and blankets were promised to all who would come and vote for the treaty. The most cunning and artful means were resorted to to conceal the paucity of numbers present at the treaty, etc.

Brig. Gen. R. G. Dunlap, in a speech to his brigade September, 1836, at their disbandment, said (p. 27):

I had determined that I would never dishonor the Tennessee arms in a servile service by aiding to carry into execution at the point of the bayonet a treaty made by a lean minority against the will and authority of the Cherokee people. * * * I soon discovered that the Indians had not the most distant thought of war with the United States, notwithstanding the common rights of humanity and justice had been denied them.

Gen. John E. Wool, of the United States Army, February 18, 1837, wrote to Adjutant-General Jones at Washington, speaking of the Cherokees (p. 27):

It is, however, vain to talk to a people almost universally opposed to the treaty, and who maintain that they never made such a treaty.

John Mason, jr., who was sent on July 15, 1837, as a confidential agent of the War Department to observe and report on the Cherokees, reported on September 25, 1837, as follows:

The chiefs and better-informed part of the nation are convinced that they can not retain the country, but the opposition to the treaty is unanimous and irreconcilable. They say it can not bind them, because they did not make it; that it was made by a few unauthorized individuals; that the nation is not a party to it. * * *

The influence of this chief (John Ross) is unbounded and unquestioned. The whole nation of 18,000 persons is with him; the few, about 300, who made the treaty having left the country. It is evident, therefore, that Ross and his party are in fact the Cherokee Nation. * * * The officers say that with all his power, Ross can not, if he would, change the course he has heretofore pursued, and to which he is held by the fixed determination of his people. He dislikes being seen in conversation with white men, and particularly with agents of the Government. Were he, as matters now stand, to advise the Indians to acknowledge the treaty he would at once forfeit their confidence and probably his life. Yet, though unwavering in his opposition to the treaty, Ross's influence has constantly been exerted to preserve the peace of the country, and Colonel Lindsey says that he, Ross, alone stands at this time between the whites and bloodshed. The opposition to the treaty on the part of the Indians is unanimous and sincere, and it is not a mere political game played by Ross for the maintenance of his ascendency in the tribe.

(History Cherokee Indians, Ethno. Bureau, 286.)

Many were the public men who denounced in the most vigorous terms the policy of the Administration toward the Cherokees; for example, Daniel Webster and Edward Everett, of Massachusetts; Theodore Frelinghuysen, of New Jersey; Peleg Sprague, of Maine; Henry R. Storrs, of New York; Henry A. Wise, of Virginia; David Crockett, of Tennessee. Tennessee being one of the States interested, it was not to be expected that one of her representatives would have protested, but David Crockett, in a speech in the House of Representatives, denounced the treatment to which the Indians had been subjected at the hands of the Government as unjust, dishonest, cruel, and short-sighted in the extreme. He alluded to the fact that he represented a district which bordered on the domain of the southern tribes, and that his constituents were perhaps as immediataly interested in the removal of the Indians as those of any other member of the House. His voice would perhaps not be seconded by that of a single fellow member living within

500 miles of his home. He had been threatened that if he did not support the policy of forcible removal his public career would be summarily cut off. But while he was, perhaps, as desirous of pleasing his constituents and of coinciding with the wishes of his colleagues as any man in Congress, he could not permit himself to do so at the expense of his honor and conscience in support of such a measure. (History of Cherokees, Ethnological Bureau, p. 288.)

With overwhelming evidence of fraud and that the treaty was not recognized by the Cherokees, it is almost unnecessary to present the numerous Cherokee protests and memorials, except for the sake of the record. The principal memorials are as follows (p. 25, 29, 39, 41, etc.):

March 8, 1836, H. Doc. 286, Twenty-fourth Congress, first session, volume 7.
June 21, 1836, H. Doc. 286, Twenty-fourth Congress, first session, volume 7.
September 28, 1836, H. Doc. 99, Twenty-fifth Congress, second session, volume 5, p. 10.
September 30, 1836, H. Doc. 99, Twenty-fifth Congress, second session, volume 5, p. 7.
December 8, 1836, H. Doc. 99, Twenty-fifth Congress, second session, volume 5, p. 14.
February 22, 1837, H. Doc. 99, Twenty-fifth Congress, second session, volume 5, p. 4.
December 15, 1837, H. Doc. 99, Twenty-fifth Congress, second session, volume 5, p. 1.
August 8, 1837, H. Doc. 99, Twenty-fifth Congress, second session volume 5, p. 15.
March 16, 1837, H. Doc. 99, Twenty-fifth Congress, second session, volume 5, p. 18.
February 22, 1838, H. Doc. 316, Twenty-fifth Congress, second session, volume 9.

The sum and substance of these petitions is to set forth the fact that the Cherokees under the treaties with the United States owned their lands and property; that Georgia determined to possess them and passed laws depriving the Cherokees of every right of property and liberty, and that their appeals to the United States were in vain; that the treaty of 1835 was made in defiance of the laws and customs of the Cherokees; was not made by the Cherokee people; was not consented to by them, and was a fraud upon the United States and upon the Cherokee Nation.

In their first protest of March 8, 1836, among other things, they say:

> *To the honorable the Senate of the United States of North America in Congress assembled:*
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> This memorial and protest of the Cherokee Nation, by their duly authorized delegates, fully empowered and sent by said nation to negotiate a treaty arrangement with the United States, respectfully showeth:
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> That since they left their nation for Washington City the Rev. John F. Schermerhorn, the United States commissioner, convened a few of the Cherokee people at New Echota, and entered into a contract with them in the form of a treaty, which has been submitted to your honorable body for ratification. This instrument purports to be a contract with the Cherokee people, when in fact it has been agreed upon in direct violation of their will, wishes, and interests by a few unauthorized individuals of the nation, as will be made manifest in this memorial and protest. * * * During the last winter the Cherokees had a regular delegation at Washington City, composed of John Ross, principal chief; Richard Taylor, Samuel Gunter, William Rodgers, and Daniel McCoy, as may be also seen among the recited documents, vested with powers to negotiate a treaty with the United States. They made two propositions—the one for a partial cession and to be secured in the residue; the other, upon a basis not authorized, but proposed conditionally, to sell the whole country for a gross sum of money.
>
> The President thought the amount asked extravagant. The delegation requested that he should bring the matter before the Senate and take their advice as to what should be done under all the circumstances. To do this the delegation are informed he declined, yet the matter was gotten before the Senate, not in the way the delegation had asked or expected, and that body by resolution expressed an opinion that a sum not exceeding $5,000,000 ought to be allowed for the Cherokee country. But before this was done John Ridge, Archilla Smith, Elias Boudinot, S. W. Bell, John West, Williams A. Davis, and Ezekiel West, individuals of the Cherokee Nation, without authority from the nation, had made their appearance in Washington City and with them the Government had commenced a negotiation for a treaty. The delegation have been informed that anterior to the matter being brought before the Indian Committee, the War Department had agreed with the above individuals upon a treaty at $4,000,000, and perhaps less, and that their willingness to receive that sum was made known to the Senate. What influence the fact had upon the action of

> that body the delegation pretend not to determine, but of one thing they are sure, if it had any, it could not be for the interests of the Cherokee people.
>
> On the 14th of March, 1835, only ten days after the opinion of the Senate as to the price that ought to be given, the United States entered into articles of a treaty with the before-named individuals, which were, by the President of the United States, directed to be submitted to the Cherokee Nation of Indians for their consideration and approbation, etc. * * *

At great length the details of oppression, threats, violence, arrest, and imprisonment is set forth, with a history of how the pretended treaty was made, and they close as follows:

> The delegation are sure it can not be the wish of the Senate of the United States to ratify and have enforced upon the unoffending Cherokee people a treaty made without their authority, false upon its face and against the known wishes of the nation. Such is the instrument submitted to your honorable body. For the truth of this statement, should the Senate require further proof, it can be obtained from numerous persons of unimpeachable integrity and veracity. But if it be the fate of the Cherokee people, and the decree has gone forth that they must leave their homes and native land and seek a new residence in the wilds of the Far West, without their consent, let them be expelled and removed by an act of Congress, that they or their posterity in after times may have some claims upon the magnanimity of the American people.
>
> The delegation do solemnly declare they would consider such an act preferable and more humane than the ratification and enforcement of a fraudulent treaty false upon its face and made without the consent of one of the professed contracting parties. The past history of the United States furnishes admonition against the ratification of treaties made with unauthorized individuals. Resting upon the sacred rights of the Cherokee Nation so often recognized, and solemnly guaranteed on the faith of treaties, the delegation now appeal to the sympathies, the honor, the good faith and magnanimity of the United States to preserve and protect their Nation from fraud, rapine, plunder, and destruction. * * * We are all children of the same Great Parent and bound to be kind to each other without regard to the situation in which we may be placed. If an earthly parent have a child unfortunately weak and poor, how would he feel to see the brothers of that child abusing it for its misfortunes, insulting its feelings, exulting in their own superiority, curling the lip of scorn with a significant cant of the head at its earnest supplications for justice? Let every man's own heart give him the answer. You have before you that unfortunate child in the weak and dependent Cherokees.
>
> With hands elevated toward the throne of grace and mercy we all supplicate, saying:
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> "Our brothers, is it true you will drive us from the land of our nativity and from the tombs of our fathers and our mothers? We know you possess the power, but by the tie that unites us yonder, we implore you to forbear."

This prayer is a sample of the others.

It should be observed that the Western Cherokee Nation, to whom had been conveyed the western lands, joined with the Eastern Cherokee Nation in their protest against the alleged treaty of 1835.

The Cherokee Nation both East and West continued to protest against the treaty of 1835, declaring it void, until the treaty of 1846 was entered into, filing numerous petitions setting this forth in various ways to which reference is here made.

June 9, 1838; page 29, H. Doc. 129; Twenty-sixth Congress, first session.
June 11, 1838; page 31, H. Doc. 129; Twenty-sixth Congress, first session.
July 21, 1838; page 34, H. Doc. 129; Twenty-sixth Congress, first session.
August 1, 1838; page 37, H. Doc. 129; Twenty-sixth Congress, first session.
June 13, 1839; page 50, H. Doc. 129; Twenty-sixth Congress, first session.
February 28, 1840; page 1; H. Doc. 129; Twenty-sixth Congress, first session.
November 11, 1840; page 48, H. Rep. 1098; Twenty-seventh Congress, second session.
January 23, 1843; page — H. Doc. 93; Twenty-seventh Congress, third session.
March 30, 1844; H. Doc. 235; Twenty-eighth Congress, first session. Volume 5.
April 13, 1844; H. Doc. 234; Twenty-eighth Congress, first session. Volume 5.
February 22, 1845; S. Doc. 140; Twenty-eighth Congress, second session. Volume 8.
April 30, 1846; S. Doc. 331; Twenty-ninth Congress, first session. Volume 7.

And when the treaty of 1846 was pending the only thing upon which the Cherokee Nation East, the Cherokee Nation West, and the so-called treaty party were entirely agreed was that the cost of removal and subsistence were not chargeable to the trust fund. A copy of which their several positions is hereto attached as exhibits, taken from their proposals in the settlement of 1846 (p. 53).

To comprehend the position of the Eastern Cherokees it has been necessary to show that until the treaty of 1846 was entered into they gave no recognition to the treaty of 1835, and even as individuals before accepting payment for their individual property they did on August 1, 1838, pass the following resolution:

> *Resolved further*, That the Cherokee people, in consenting to an investigation of their individual claims, and receiving payment upon them, and for their improvements, do not intend that it shall be so construed as yielding or giving their sanction or approval to the pretended treaty of 1835, nor as compromitting in any manner their just claims against the United States hereafter, for a full and satisfactory indemnification for their country, and for all individual losses and injuries.

And in their memorial of February 28, 1840, above referred to, they pray for (p. 46)—

"Indemnification for the country which has been taken away from them east of the Mississippi, etc.," in response to which they finally succeeded in obtaining a promise from President John Tyler, of a new treaty that should be satisfactory and just. The President says in this letter of September 20, 1841 (H. Rep. 288, Twenty-seventh Congress, third session):

> Upon the ratification of the treaty contemplated which shall give to the Cherokee Nation full indemnity for all wrongs which they may have suffered, etc., I shall rejoice, etc.

On December 20, 1842 (see p. 22, H. R. Ex. Doc., 234, Twenty-eighth Congress, first session, vol. 5), John Ross, principal chief, having been requested to lay before the National Council a statement of the amount of money received by him from the Government of the United States since the year 1835, replied among other things that he had never received any money under the treaty of 1835, declared that he and the Cherokee people had always disclaimed that contract, that their claims against the United States still remained open and unadjusted, but that they had the unequivocal promise of the President of the United States that they should be satisfied.

In 1844 the Secretary of War appointed a commission of Jones, Mason, and Butler, hereinafter referred to, who very strongly recommended a new treaty, as recommended by President Tyler, etc., and set forth the reasons why the United States in good conscience were in honor bound to pay the Cherokees their per capita.

The treaty of 1846 was the one contemplated and finally effected and proclaimed August 17, 1846.

This history fully shows that the Eastern Cherokees and their principal chief, John Ross, never recognized the treaty of 1835, except in the manner prescribed in the treaty of 1846, and in no manner whatever until August 17, 1846.

COMMISSIONER MEDILL'S REPORT.

Commissioner Medill has suggested that the Eastern Cherokees under John Ross were informed by General Scott that—

> as the Cherokee people are exclusively interested in the cost as well as the comfort of the removal, I do not feel at liberty to withhold my sanction [to John Ross's estimate]. The commissioner says that the Secretary of War, in reply to General Scott upon the subject, took the same view—he was of opinion that the amount was very extravagant; that $30 per head had been regarded as sufficient, and that "what-

ever sum over and above this amount that may be expended for this purpose will have to be deducted from the original purchase money agreed to be paid them by the treaty of Echota (the $5,000,000), and this must be fully explained to the chiefs and head men, and ought to be understood by the nation." (P. 17, Ex. Doc. 65, Thirtieth Congress, first session, H. R.)

The commissioner does not say in his report that General Scott only communicated this to John Ross on November 15, 1838, after the entire expedition was practically too far advanced, all the detachments being on the road, for the contract to be in any degree changed. (See the evidence of Winfield Scott, last line of page 38, House Report 288, March 2, 1843.) Commissioner Medill fails to state that John Ross and the Eastern Cherokees while in General Scott's camp under capture in the same resolution which authorized the delegation to negotiate with General Scott for their self-emigration on July 21, 1838, did enter their solemn protest against the pretended treaty of Echota and referred to the fact that their delegation had just returned from Washington City "under a special understanding with the honorable the Secretary of War." Commissioner Medill omits to state the fact that the Secretary of War in his letter to John Ross and his delegation on May the 18th, 1838, said to them:

> If it be desired by the Cherokee Nation that their own agents should have the charge of their emigration their wishes will be complied with and instructions be given to the commanding general in the Cherokee country to enter into arrangements with them to that effect. With regard to the expense of this operation, which you ask may be defrayed by the United States, in the opinion of the undersigned the request ought to be granted, and an application for such further sum as may be required for this purpose shall be made to Congress.

Commissioner Medill fails to state that the Secretary of War on June 1, 1838, wrote to General Scott, that—

> It is proposed to make such allowances to the Cherokees as it is believed were intended originally to have been made by the Senate.

That is to say, that the $5,000,000 fund should not be charged with removal, but removal paid by the United States. (See p. 3, H. Doc. 453, Twenty-fifth Congress, second session.)

Commissioner Medill fails to point out that the Secretary of War on May 23, 1838, wrote General Scott as follows:

> WAR DEPARTMENT, *May 23, 1838.*
>
> SIR: You will receive herewith a copy of proposals (already communicated to Congress by the President) made by the Department to the Cherokee delegation now in this city, which it is believed will be accepted by them. You are therefore hereby authorized to enter into an agreement with the agent of the nation for the removal of their people. The expenses attending the emigration of the Cherokees are now fully ascertained by past experience; and it is presumed you will find no difficulty in making such an arrangement as, while it will secure their comfortable removal in the manner most agreeable to their chiefs and head men, will effectually protect the interests of the United States and prevent all unnecessary delay or useless expenditures.

Commissioner Medill fails to state the authority which was given to John Ross and his associates for the removal of the Cherokees. It is as follows:

> They are hereby authorized and fully empowered to make and enter into any and all such arrangements with Major-General Scott on the part of the United States which they may deem necessary and proper for effecting the entire removal of the Cherokee people from the east to the west of the Mississippi River, and also to enter into such further arrangements with the Commanding-General in relation to the payment of such sums of money by the United States as may be necessary for the removal and subsistence of all the Cherokee people.

This limited resolution was passed on July 26, 1838, and is the only authority the Cherokees gave.

It contemplated the payment by the United States of this removal. How could General Scott or John Ross go beyond it and bind the Cherokees?

It contemplated the "special understanding of the honorable Secretary of War," who had advised General Scott it was "proposed to make such allowances to the Cherokees as it is believed were intended originally to have been made by the Senate."

That is, the Senate intended the $5,000,000 fund should not include the cost of removal. The special understanding of the Secretary of War was that the expense of removal or self-emigration by the Eastern Cherokees should—

> be defrayed by the United States, and an application for such further sums as may be required for this purpose shall be made to Congress.

With what face can he after this say a part of "such further sum as may be required for this purpose" shall be charged to the Cherokee trust fund?

It is true that General Scott was under the impression as he says, on August 2, 1838, that—

"The Cherokee people are exclusively interested in the cost as well as the comfort of the removal," but he said nothing whatever about the trust fund. He had before him the letter of the Secretary of War agreeing that the cost of removal, in his opinion, should be borne by the United States, and he was instructed by the Secretary of War to protect the interests of the United States. It is true that he thought the estimate extravagant, but it is also true in his testimony that the terrible drought of that summer led him to give it his approval. General Scott says, on page 37, H. Report 288, Twenty-seventh Congress, third session:

> The drought that nearly desolated so many States in 1838 commenced in the southwest at the end of May and continued into October. During the latter eight or ten weeks of its continuance it would have been impossible for a detachment of 100 Indians, with their horses, to have found water on the land routes for many and many marches together; hence all the subsequent difficulties and embarrassments in my plans, and the emigration itself; for, but for the drought, I would have quashed the contract with Lewis Ross as extravagant, and the renewed movement beginning with September would have escaped ice, snow, and bad roads and been ended in eighty days by each detachment. The drought was a calamity to the country generally, and particularly so to the poor Cherokees.

The United States agree to pay the expense, but because the drought doubles the expense the Cherokees become liable for the additional cost. This is magnanimous, indeed.

Commissioner Medill quotes a part of the letters of General Scott of August 1 and August 2, 1838, and leaves the impression that General Scott advised the Cherokees that the cost of the removal under Ross contract might be charged to the trust fund.

The fact is, August 1, 1838, General Scott says: "The whole expense of the emigration is to be paid out of the *appropriations* already made by Congress, the general surplus of which is to go to the Cherokee Nation in various forms."

The only appropriations made for removal by Congress was the $600,000 and the $1,047,000.

The trust fund of $5,000,000 (less $500,000 for land in Kansas) was not appropriated for removal, but "for the amount stipulated to be paid for the lands ceded."

General Scott referred to the appropriations for *removal* and to no other appropriations, as further appears from his letter of July 25, 1838, requiring the Ross contract to include fugitive Creeks residing with Cherokees and agreeing that the United States, under such contract proposed, would "pay over to the Cherokee functionaries, from time to time, such portions of the moneys *appropriated for the emigration* as may seem reasonable," etc.

It is true that General Scott indicates in his evidence (p. 37) that on November 15, 1838, he advised Ross that the United States would use the trust fund after exhaustion of the sums appropriated for removal, etc., but that was one hundred and seven days after the Ross contract was made, and too late to make any changes. It appears from Commissioner Medill's report that General Scott's letter of November 15, 1838, was written on a suggestion from the War Department.

Change in a contract requires the consent of both parties. No pretense is made that the Cherokee council agreed to any change. It could not even meet till emigration had been completed.

Commissioner Medill fails to state that over 600 Cherokees died on the road from exposure.

Commissioner Medill thinks it right to charge the Cherokee trust fund with $581,346.88, which was paid to John Ross on his contract, and justifies this by saying:

> Whether this sum was actually absorbed in the mere removal of the Indians or not, it was paid on the demand of the Cherokees themselves, and they must be considered as having enjoyed the benefit of it in that or some other way; and the amount for per capita distribution was thus materially diminished.

The Cherokee Nation was forced by bayonets to the attitude of contracting their self-emigration, and because they demand payment it follows that they should be paid out of their own money. Secretary Poinsett proposed to the Cherokees self-emigration at the expense of the United States, so advised General Scott. The Cherokee council authorized their leaders to make—

> Arrangements with the commanding general in relation to the payment of such sums of money by the United States as may be necessary for the removal and subsistence of all the Cherokee people.

Commissioner Medill seems to think this does not really mean "by the United States," but by the United States as trustee of a fund these Indians bitterly denied.

These same people at the same time repudiate the treaty of 1835 and any alleged trust fund thereunder, and still do so on November 11, 1840, when they authorized John Ross to demand payment in their name, and at that same instant show by the preamble that they understood in making the demand it would and ought to be paid out of the United States Treasury and not out of any trust fund whatever; yet, Commissioner Medill, entirely overlooking all these things, says:

> They must be considered as having enjoyed the benefit of it in that or some other way.

Their enjoyment of this removal is exhibited by their piteous and unavailing appeals for mercy, and by the graves of their dead that marked every mile of the road, and by the cries of their women, bearing children in the hot sun, covered with dust, in a desolating drought, in jolting wagons over the roughest roads. This contract was not sought by the Cherokees.

It was a measure of economy to permit the mustering out of an army of 10,000 men thought necessary to enforce a perfidious instrument, which was equally a fraud on the United States and on the unhappy Cherokees.

Commissioner Medill fails to point out that if John Ross and his self-emigrating Cherokees had been emigrating themselves under the treaty of 1835 they would have been restricted to $20 per capita for such removal under article 8 of that treaty.

Commissioner Medill fails to point out that the United States, as trustee, could not in justice to the cestui que trust under the fifteenth article have allowed exceeding $20 per capita to any self-emigrating Cherokees.

Commissioner Medill fails to point out that in the treaty of 1846, article 4, the principle is laid down that only $20 per capita shall be charged for removal against the $5,600,000. In other words, by this article, in settling with the Old Settlers, or Western Cherokees, the trust fund was not to be charged with removal. Commissioner Medill's report finds that the Western Cherokees who are entitled to a sum equal to one-third of the balance under the fifteenth article of the treaty of 1835, are entitled to $419,763.96, while the Eastern Cherokees, who are entitled to three times as much, or the entire balance under the same article, he only allows $184,071.28, instead of $1,259,291.88. (See pp. 16 and 20, H. R. Ex. Doc. 65. Thirtieth Congress, first session.)

Commissioner Medill, in settling with the Old Settlers, finds the balance under the fifteenth article of the treaty of 1835, $1,259,291.88. (See page 19, ibid.)

In settling with the Eastern Cherokees, on page 14, he finds the balance under the same article 15, treaty of 1835, $184,071.28.

Commissioner Medill has juggled these accounts in a manner nothing short of scandalous. He charged the emigrant Cherokees over $5,000 more than the Western Cherokees under the seventeenth article.

He charges the emigrant Cherokees over a million dollars more than the Western Cherokees on account of removal and subsistence, etc.

He charges the Western Cherokees against the $600,000 fund for spoliations and rents and reservation and preemptions, not one of which is justly chargeable against this fund under Attorney-General Butler's opinion, and thus consumes the fund notwithstanding the fact that by the report of the Second Auditor, of August, 1842, submitted by J. C. Spencer, Secretary of War, to Hon. James Cooper, chairman of the Committee of Indian Affairs, it is shown that this $600,000 was practically consumed for removal at that time. (H. R. Rpt., 288 Twenty-seventh Congress, third session, Vol. IV, p. 52.)

For further answer that the account of John Ross, or of the Cherokee Nation, was against the United States and not against the trust fund, attention is called to H. Report 1098, Twenty-seventh Congress, second session, and H. Report 288, Twenty-seventh Congress, third session, wherein it appears that every one of the accounts was rendered against the United States, and in no case against the trust fund, and where it appears from the affidavits of numerous witnesses, to wit, Gideon Morris, Gary Hinnant, John Howard Payne, etc., who show that Ross never did consider his claim except as a claim on the United States and not on the trust fund. That neither Ross nor the Cherokees recognized the existence of a trust fund, and that President Tyler, in ordering it paid in his letter of September 20, 1841 (page 49, H. Report 288, Twenty-seventh Congress, third session), was evidently under the impression that he was settling the claim of the Cherokees against the United States, and not of the Cherokees against the trust fund whose existence they denied in their memorial to him, and in which they had demanded indemnity for the wrongs of 1835, and were by him promised indemnity for those wrongs.

This mass of evidence showing that this account was against the

United States has no evidence whatever to the contrary, the absence of which is itself testimony of the most important character that the account was against the United States alone.

It has been charged that John Ross was grossly unjust in insisting on the settlement to the extent he did under his contract with General Scott. These complaints, which were vigorously urged against him, would seem to be set at rest by the final decision in his favor that his claim was just, made by President Tyler.

It should be remarked that under the Ross contract for removal the amount provided by Congress of $1,047,067 and the $335,105.91 applicable for removal out of the $600,000 would more than have paid the actual cost of removal under the John Ross contract, even including the $581,346.88 due to the delays caused by the drought and heavy winter weather, as explained by General Scott.

It should be kept clearly in mind that whether removal was justly chargeable under the Scott contract to the United States or to the trust fund does not depend on the amount involved, but on the understanding of the Indians who made it, under their authorized understanding with the Secretary of War, and their authority given to Ross.

THE TREATY PARTY INTERPRETATION OF THE TREATY OF 1835.

The treaty party take the following view of the treaty of 1835 in regard to removal:

That the Senate had offered them $5,000,000 for their land and possessions.

That the United States were under contract to remove every Cherokee from the East to the West at the expense of the United States.

That to use the purchase money of their lands for removal was using the consideration price to pay a subsisting obligation of the United States Government and was precisely the same thing as not paying the purchase price.

The treaty party insists that they did not intend to agree that removal should be charged to the trust fund; that the Senate did not intend it should be done; that for this reason they expressly agreed to leave it to the Senate to say what their intention was, and that the Senate did decide that it was not the intention of the Senate to charge the purchase price with the cost of removal.

That on Schermerhorn's own estimate as shown in the treaty he urged the Cherokees to agree to on October 23, 1835, at Red Clay, he estimated spoliations and removal combined at $505,000, or $250,000 for spoliations and $255,000 for removal, and that by Schermerhorn's own estimate, as shown in article 3, supplement 1835, which he himself drew, it was represented to the Senate that $600,000 would cover spoliations and removal and leave a surplus for the education fund.

The treaty party insist that if the estimate was erroneous and proved by subsequent events to have been entirely too small, this circumstance can not be argued to affect the intention of the contracting parties. If the parties did not intend to charge the trust fund with removal when the treaty was made, no different interpretation can be subsequently attached thereto, except by a formal agreement, which is not anywhere pretended to have been made. The treaty party insist that if on May 23, 1838, the trust fund was chargeable with removal, there being an abundance of such trust fund on hand with which to pay the entire cost of removal, the House of Representatives would not have passed a resolution directing the Secretary of War to make an estimate for removal and subsistence.

If the trust fund was chargeable, the Secretary of War would have had no excuse for agreeing with John Ross that the expense of removal should be borne by the United States, as he did do on May 18, 1838.

If the trust fund was chargeable, the Secretary of War would have had no excuse to estimate for an amount sufficient to pay the entire cost of removal, as he did do on May 25, 1838.

If Congress itself had not intended to stand firmly by the construction of the treaty as heretofore set forth and which existed in 1836, when the treaty was made, Congress would not have appropriated a sum sufficient to meet the entire amount estimated as necessary to pay the whole cost of removal out of the United States Treasury.

The fact that Congress made such an appropriation proves that Congress believed that the Secretary was right in his proposal to Congress, and which proposals were before Congress, wherein the Secretary declared the United States ought to pay the cost of removal.

The treaty party insist that this was not a sudden burst of generosity, but that it was in accordance with the view theretofore entertained by the War Department, which held that the United States, under the treaty of 1828, were chargeable with removal and subsistence, as will appear from the letter of Mr. Commissioner of Indian Affairs Harris to B. F. Curry, Cherokee Indian agent, as follows:

> SIR: I acknowledge the receipt of your letter of the 26th of October last, and in reply have to observe that I have taken the decision of the Secretary of War ad interim upon the claims of the Cherokees to commutation for subsistence at $33.33 each. The Secretary decides that the commutation may be paid at the rate above stated, but at the same time declares that *the allowance is made under the treaty of 1828.* (S. Doc. No. 120, vol. 2, p. 209, Twenty-fifth Congress, second session.)

That under the treaty of 1835 enrollment books for voluntary emigration were opened in the then Cherokee country. Instructions as to the nature of the enrollment were sent by the Acting Secretary of War, C. A. Harris, to Lieut. J. Van Horne, United States Army, dated September 12, 1837, in part as follows:

> Enrolling books must be prepared on the following plan: A memoranda or entry must be inserted purporting that the subscribers assent to a treaty with the United States upon the terms *heretofore offered by the Pesident to their people,* and that if no treaty should be made during the next fall or early in the winter, then the subscribers will cede to the United States all their right and interest in Cherokee lands east of the Mississippi, upon the following conditions: That they shall receive, so fast as Congress shall make the necessary appropriations, the ascertained value of their improvements on their arrival West; *that they shall be removed and subsisted for one year at the expense of the United States;* that they shall be entitled to all such stipulations as may be hereafter made in favor of those who do not now remove, etc.

The Cherokees were thus told, September 12, 1837, that they should be removed and subsisted for one year at the expense of the United States and be offered the terms heretofore offered by the President, to wit, $150 each per capita. The payment of the present claim, found due by the Department of the Interior, excluding interest, would only make a total per capita of $124.78, and in 1852, instead of being paid $150 they were only paid $56.31 per capita, and this is the ground of their present complaint.

The treaty party further complain that when they made the treaty of 1835 they were promised protection; that they did not receive it; that their leaders were killed; that they were ostracized and the per capita promised to them never paid; that it is now due and no just excuse can be found for not paying it.

COMMISSIONER MEDILL'S VIEW.

Commissioner Medill, upon whose report of May 10, 1848, the error rests for the unlawful withdrawal from the trust fund of a large sum on account of removal, submits the following argument:

[We assume it will only be necessary to answer the reasons which he assigns, and that his dictum in the absence of reason in support thereof will not be permitted to control in defiance of substantial argument to the contrary.]

The first reason offered by Commissioner Medill is that the correspondence prior to the negotiation of the treaty shows that removal and subsistence in the schedule submitted were to be deducted from the $5,000,000 fund "to be given for the lands, or, rather, as the difference in value between them and those assigned to the Cherokees West," etc. He refers to Secretary Cass's letter, that—

"No proposition for a treaty will hereafter be made more favorable than those now offered to them," as proof that removal and subsistence was to be deducted from the $5,000,000, and was so understood by the Indians.

Commissioner Medill omits to state that this proposed treaty, with its schedule, was unanimously rejected by the Cherokees in general council October 23, 1835, even Ridge and Boudinot voting against it.

Commissioner Medill omits to quote the second article of the supplement, treaty of 1835, in which appears plainly recorded the intention both of the Cherokee citizens (who were paid to negotiate this treaty) and the Senate of the United States that the $5,000,000 trust fund should not include removal. He omits to state the construction of the Department of War of November 18, 1836, to Cherokee Indian Agent Curry, above quoted, and the construction of September 12, 1837, to Lieutenant Van Horne, above quoted. He omits to mention Secretary of War Poinsett's agreement with John Ross of May 18, 1838, that removal should be at the expense of the United States.

He omits to state that the Secretary of War instructed General Scott that it was proposed to make such allowances to the Cherokees as it is believed were intended originally by the Senate, i. e., that the trust fund should not include removal.

In the above quotation from the Commissioner he intimates that the $5,000,000 was paid the Cherokees East "as the difference in value between the lands East and those assigned to the Cherokees West," as if those assigned to the Cherokees West was a part of the consideration to the Cherokees East under the treaty of 1835. The lands West had been guaranteed to the Western Cherokees under the treaties of 1828 and 1833. The Eastern Cherokees acquired not one acre of such lands by the treaty of 1835; what they did actually get was the bitter hostility of the Western Cherokees, upon whom they were injected.

It is true that two Western Cherokees signed the treaty of 1835, but it is also true the men who did it, James Rogers and John Smith, had no authority to sign such treaty. It is also true that Schermerhorn wrote the following letter to the Commissioner of Indian Affairs with regard to the delegation of the Western Cherokees:

> If they are true and faithful they may be of great service, and if they are not, I have told Coody what I should be obliged to do in reference to them. (Page 482, S. Doc. 120, Twenty-fifth Congress, second session.)

And it is also true that Schermerhorn paid Coody $1,407 and that he paid James Rogers and John Smith, who signed the treaty, $2,175 each, or a total of $5,747 for their services (p. 1034, Sen. Doc. 120), and that

Schermerhorn thus violated the instructions of President Jackson, that he "must make no particular promise to any individual, high or low, to gain his cooperation. The interest of the whole must not be sacrificed to the cupidity of a few."

Commissioner Medill says:

> The question was raised whether the spoliations, the cost of removal, and claims which many of the Cherokees had against the United States were to be paid for out of the consideration money for the lands. This question having been submitted to the Senate, it was agreed to allow the additional sum of $600,000 toward those objects, and in lieu of the annulled grants of preemptions and reservations. This was not an assumption by the Government of the whole cost of removal and of all the spoliations and other claims against the United States, but only an extension and increase of the consideration money with reference to those objects. Had the former been intended, an estimate would have been made of the probable cost of removal and of the probable amount of the claims (except the spoliations, which were limited by the treaty to $300,000), in order that the additional amount to be allowed might be made to embrace all; but this was not done.
>
> It was a compromise between the Government and the Cherokees. * * * It was, in effect, an increase of the consideration money granted, etc.

These bold statements are unsupported by any sound reason and are contradicted by the facts of the history.

Commissioner Medill in the above quotation omits to mention that the second article, supplement 1835, expressly declared the intention of the Cherokees who negotiated the treaty and the Senate of the United States to be that the trust fund should not include removal. Commissioner Medill does not hesitate to construe the trust fund to include removal, in direct conflict with the declared intention of both parties and in conflict with the rulings of the War Department of November 18, 1836, and of September 12, 1837, of May 18, 1838, of May 25, 1838, and of June 1, 1838, heretofore cited, that removal was chargeable to the United States and not to the trust fund.

And what reasons besides his fatal omissions does Commissioner Medill offer? He quotes certain commissioners with approval, and offers no other reason. These commissioners are alleged to be those who were appointed in July, 1846, to inquire into matters in dispute between the Cherokees and the United States, and who, under a subsequent appointment, negotiated the treaty of 1846.

These commissioners, as quoted by Commissioner Medill, repeat the argument we have already answered, to wit, that the negotiations in the proposed treaty in the spring of 1835 showed that the Government officers proposed to deduct "removal" from the purchase money offered by the Senate. We have abundantly answered this argument by showing that on this very account, among others, the proposed treaty was rejected by the Cherokee people in full council at Red Clay October 23, 1835, against which even Ridge and Boudinot voted (History of Cherokee Indians, p. 280), etc., as above set forth.

The commissioners quoted by Commissioner Medill, omitting all the record to which we have referred, without other argument, add as a conclusive proposition two sections from Senator White's report (S. Doc. 466, second session Twenty-fifth Congress), to wit:

> They believe the $5,000,000 given by the treaty as the difference in value between the countries exchanged and the $600,000 before mentioned, allowed for spoliations, and as a fund for removal, constitute a very liberal consideration on the part of the Federal Government; yet the committee would feel much better satisfied that too much should be done for the Cherokees than too little. If, therefore, the voluntary grant of an additional sum of money can be made the means of hastening their removal to their new home, of dispensing with the use of a large military force, and of insuring confidence in the justice of the Government and of restoring harmony and good feelings, they believe economy, humanity, and peace will be best consulted by making such grant.

> With a view to attain these objects the committee would respectfully recommend to the Senate that in the passing of some appropriation bill still to be acted on an item be inserted placing a reasonable sum of money at the disposal of the Executive.

The commissioners, commenting on these two paragraphs, triumphantly say that the subsequent appropriation of $1,047,067 was a voluntary grant made for the purpose of hastening the removal of the Indians, etc., and "the expenditures specified in the fifteenth article are therefore justly chargeable upon the treaty fund."

[The conclusions of the commissioners wrongfully appear as a part of Senator White's report in Ex. Doc. 65, Thirtieth Congress, first session.]

The fact that Senator White, in a very brief report giving some reasons for supporting the estimate of the Secretary of War, refers to the appropriation as a voluntary grant, is seized upon as proof that removal was justly chargeable upon the treaty fund.

It should be remembered that Senator White and his committee were not passing upon the proposition as to whether or not the trust fund was chargeable with removal, but were only giving reasons for supporting the estimate of the War Department, which came before the committee on the Secretary of War's letter containing the proposals to John Ross, that the expense of removal should be defrayed by the United States. Senator White supports the Secretary under the impression that it was a voluntary grant. This proves nothing except as to Senator White's opinion, as he gives no reason for thinking it a voluntary grant except that the committee thought the Government had been liberal in theretofore granting $5,600,000 "as the difference in value between the countries exchanged" by the treaty of 1835.

Senator White would have been justified in his conclusion that $5,600,000 was a very liberal consideration if it had been in fact given as the difference in value between the countries exchanged; but there were no countries exchanged by the treaty of 1835. Judge White imagined that the Cherokees had received 14,000,000 acres in exchange for the land they relinquished in 1835. The treaty as drawn might leave this impression, but in point of fact every acre of this land had been deeded to the Western Cherokees under the treaties of 1828 and 1833, and the Eastern Cherokees were receiving by the treaty of 1835 14,000,000 acres less than he thought.

More than that, Judge White's committee recommended a reasonable sum, and the Senate thought it reasonable to appropriate enough to pay the entire cost of removal, as estimated by the Secretary of War.

The committee report purports only to have had under consideration the estimate and the letter of the Secretary of War. The committee made no examination into the questions involved, and as to the $600,000 the committee says:

> How this fund has been disposed of or whether any or what part of it yet remains to be expended the committee do not know.

And as to the commutation of the annuity of $10,000, under the treaty of 1835, and the stipulations in relation thereto, the committee says:

> How far this stipulation has been complied with the committee do not know.

These are the simplest items and are only mentioned to show that the committee had given no special examination to the questions involved and had no intention of deciding them, nevertheless the commissioners triumphantly declare that—

> The expenditures specified in the fifteenth article are therefore justly chargeable upon the treaty fund.

And Commissioner Medill has this conclusion appear in his report as if it were a part and parcel of Senator White's report.

Commissioner Medill thus quotes the report of the Indian committee, which did not have this subject under consideration, and draws an unwarranted conclusion from such report. He omits to quote the opinion of the Senate Committee on Indian Affairs, which did have this entire subject before them, and had in the preceding year made a report fully sustaining the Cherokees' construction of this treaty as sound and conclusively right, to wit, the report made by the Committee on Indian Affairs of the United States Senate on February 19, 1837, as follows:

REPORT OF THE COMMITTEE ON INDIAN AFFAIRS OF THE UNITED STATES SENATE.

[Jarnigan Report.]

The Committee on Indian Affairs, to whom was referred the memorial of David Vann and William P. Ross, delegates from the Cherokee Nation, respectfully report the following facts, which will enable the Senate to decide the various questions upon which the Cherokee delegation and the commissioners appointed to treat with them in July last could not agree, and which, by the terms of the treaty of the 6th of August, 1846, were to be submitted to the arbitrament of the Senate, whose award was to constitute a part of that treaty. The peace and happiness of the Cherokee Nation so imperiously demanded the immediate adoption of that treaty that the Cherokee delegation could not refuse their assent to it, leaving certain questions to the arbitrament of the Senate. Peace and quiet have been restored in the Cherokee country, and it now only remains for the Senate to decide the questions which have been submitted to it that the account may be finally made up and closed.

The first of these questions is, whether, by the treaty of the 29th of December 1835, it was the understanding of the parties that the various sums since charged to the $5,000,000 fund given by that treaty have been properly so charged. On the 28th of February, 1835, a delegation from the Cherokee Nation proposed to submit the terms of the treaty to the arbitrament of the Senate of the United States. In considering the subject the Senate only looked to the value of the lands and have so said in language most explicit. The preamble to that treaty recites the submission which had been made to the Senate, and then adds:

"And whereas, on such submission, the Senate advised that a sum not exceeding $5,000,000 be paid to the Cherokee Indians for their lands and possessions east of the Mississippi River." The sole consideration stated for the $5,000,000 was "their lands and possessions east of the Mississippi River." If anything else had been intended to be included, such as claims for spoliations, subsistence, removal, etc., why was it not so stated in the treaty?

It is enough to show that it is not so stated, but it is manifest that such was not the intention of the parties, for the amount of these spoliations, the expense of removal, etc., were not then known and could not have been ascertained, and, besides, they were subsisting claims upon the Government of the United States which they were bound by treaty to have paid. Not to pay them, or to pay them out of the funds of the Cherokees which had been fixed by the Senate as the value of their lands, was precisely the same thing.

The United States were bound by the treaty of 1828 to pay the expenses of the removal of all the Cherokees. This obligation was not released by the purchase of their lands at their appraised value. Would such a thing be pretended in a similar transaction between individuals? If all the Cherokees had removed before they ceded their lands, the United States were bound to pay the cost of removal. If the United States afterwards bought the lands of the Cherokees, they were bound to pay the price at which they were appraised. The first article of the treaty recites that—

"The Cherokee Nation hereby cede to the United States their lands east of the Mississippi River and hereby release their claims for spoliations of every kind, for and in consideration of $5,000,000. But as a question has arisen between the commissioners and the Cherokee people whether the Senate, when they advised that a sum not exceeding $5,000,000 be paid the Cherokee Indians for their lands and possessions east of the Mississippi River, had included or made any allowance for claims for spoliations, it is therefore agreed on the part of the United States that this question shall be submitted to the Senate for their consideration and decision, and if no allowance was made for spoliations, that then an additional sum of $300,000 be allowed for the same."

It will be seen by the above that subsistence and removal were not included in the above article, nor was any question as to either of those items then even thought of. But the only thing pretended to be charged upon this fund was spoliations.

The Senate decided that the sum of $5,000,000 was given for the lands alone, and a supplemental article giving $600,000 was added to pay for spoliations and removal, but still not including subsistence. That sum it was then thought would be sufficient to cover these charges; but it was found that it was not, and the United States, feeling that they were bound to pay these charges, again in 1838 appropriated $1,047,000 for these objects.

The Cherokee Nation does not contend that the treaty fund shall be relieved from the charge for spoliations but only from the cost of one year's subsistence and removal to the West. Both of these sums, which were added by Congress, were found inadequate to pay these various charges, and the fund of $5,000,000 has been used for that purpose and others, to its entire exhaustion, or nearly so. They ask to be relieved from the charges for removal and subsistence. It is very clear that not until after the exhaustion of the $600,000 and the $1,047,000 did the officers of the Government of the United States ever once think that the $5,000,000 was liable for these charges. Not one dollar of that fund was ever so used until then. The following communication from the then Secretary of War shows that his understanding was that this fund was not liable for these charges, or else he would not have made the requisition for the sum of $1,080,000; that is to say, $1,047,000 for these purposes and $33,000 for annuities.

Congress made the appropriation at once, which shows that the opinion of that body was the same.

If the $5,000,000 fund was liable for these charges, how could the Secretary have said that there were no funds to meet them when there was the $5,000,000 fund?

Why did Congress make this additional appropriation? The only answer which can be given is, that it was considered just under the treaty, as the Senate had said when the subject was a second time referred to that body for its decision on this specific question, that the treaty fund of $5,000,000 was not liable to be charged with these expenses. (Doc. 401, second session Twenty-fifth Congress.)

DEPARTMENT OF WAR, *May 25, 1838.*

SIR: In compliance with a resolution of the House of Representatives of the 23d instant, requiring a statement of the amount that will be required for the additional allowance proposed to be made to the Cherokees, I have the honor to present the following estimate:

Payment of the expenses of removing the remaining Cherokees, estimated at 15,840, at $30 per head	$475,200.00
Amount applicable to that purpose	39,300.00
Balance to be provided for	435,900.00
If it should be deemed proper to make any further provision for the payment of the subsistence of the emigrants for one year after their arrival West, it will require, estimating the whole number at 18,335, thereby including those who have already emigrated, and allowing the amount stipulated, viz, $33.33 a head	611,105.55
Add for contingencies, under estimates, both of number to be removed and of expenses to be incurred	100,000.00
The amount of annuities, payment of which is asked for by the deputation, will be	33,330.00
	1,180,335.55

Very respectfully, your most obedient servant,

J. R. POINSETT.

Hon. J. K. POLK,
Speaker House of Representatives.

But this is not all. The question was submitted to the Secretary of War for his decision of this specific point, and he decided that these charges of subsistence and removal were not chargeable to the treaty fund but to the Government of the United States under the treaty of 1828.

Shortly after the ratification of the treaty of 1835 a question arose as to the allowance of claims for commutation of the year's subsistence, which was referred for decision to the War Department; and the decision was communicated by the Hon. C. A. Harris, Commissioner of Indian Affairs, to B. F. Curry, superintendent of the Cherokee removals, in his letter under date of November 18, 1836, in which he says: "I acknowledge the receipt of your letter of the 26th of October last, and in reply have to observe that I have taken the decision of the Secretary of War ad interim upon the claim of the Cherokees for subsistence at $33.33 each. The Secretary decides that the commutation may be paid at the rate above stated, but at the same time declares that the allowance is made under the treaty of 1828, and not in pursuance of any stipulations of the final treaty of 1835." (See Senate Doc. No. 120, p. 209, second session Twenty-fifth Congress.)

The treaty fund was never touched, nor was it ever pretended that it was liable for these charges until after the appropriations made for these specific objects had been exhausted. Now, it seems very clear that if the Government of the United States was liable for these charges when the additional sum of $600,000 was given, and then again when the further sum of $1,047,000 was given, it is equally liable for whatever may remain of these charges after both of these sums have been exhausted. The magnitude of the obligation can not be held to release the party from its fulfillment.

The thirteenth article of the treaty, which stipulates, on the part of the United States, to pay for reservations of which the Indians have been deprived, closes with the following words:

"It is expressly understood that the amount to be allowed for reservations under this article shall not be deducted out of the consideration money allowed the Cherokees for their claims for spoliations and the cession of their lands, but the same is to be paid for independently by the United States, as it is only a just fulfillment of former treaty stipulations."

Here, again, the consideration given is stated. And what is that consideration? Why, claims for spoliations and the cession of their lands—not a word said about anything else; and this because "it is only a just fulfillment of former treaty stipulations." Does not this apply equally to the payment of removal and subsistence? The Government was bound to do this by the treaty of 1828, and again by the eighth article of the treaty of 1835:

"ART. 8. The United States also agree and stipulate to remove the Cherokees to their new homes in the West, and to subsist them for one year after their arrival there, etc. Such persons and families as, in the opinion of the emigrating agent, are capable of removing and subsisting themselves shall be permitted to do so, and shall be allowed in full for all claims for the same, $20 for each member of their family, and in lieu of their one year's rations they shall be paid the sum of $33.33, if they prefer it."

What does the word "also" in the above article mean, unless it be that this removal and subsistence shall also be paid in addition to the price given for their lands? Is there any other imaginable meaning that can be given to it? The more clearly so, as the United States were bound by the subsisting and unabrogated treaty of 1828 to pay these charges.

But if neither cost of removal nor subsistence is to be paid by the United States, it is too clear to admit of contradiction that there is neither justice nor right in charging the treaty fund with more than $33.33 for subsistence nor more than $20 for removal. That was the sum which the United States were willing to allow; the sum which was fixed on as fair and proper. If the United States made it cost more, there is no justice in charging the excess to the treaty fund, but all such excess should be borne by the United States. So of the removal. The Indians were detained more than a month after they were assembled and ready to remove. This expense should also be borne by the United States, and all losses sustained on the resale of provisions which were not needed nor consumed.

As to the justice of interest the committee have no doubt. If the treaty fund had not been charged improperly, as it is now acknowledged, the money would have been paid twelve years ago. This was in no wise the fault of the Cherokees, but of the officers of the Government of the United States. The Cherokees have for all this time been deprived of the use of the money justly due them, and the United States have had the use of it for their own benefit. They have been paying interest upon money borrowed all this time, and would have had to pay that interest on a larger sum if they had paid the Cherokees what was justly due them. It is not the case of a claim of an individual, but of a people treated with as a nation; and not to have paid it was a violation of a treaty, and must be repaid now. For the claims of American citizens on Mexico and other Governments interest has been claimed by our Government and allowed. * * * The committee therefore report, and recommend the adoption of the following resolutions:

Whereas by the treaty of the 6th of August, 1846, between the United States and the Cherokee Indians, certain questions were agreed to be submitted to the decision of the Senate:

1. Resolved, That, in the opinion of the Senate, whatever balance of the fund of $5,000,000 stipulated to be paid to the Cherokee Nation by the treaty of the 29th of December, 1835, and the subsequent additions thereto, may now be ascertained to be due to the said Cherokee Nation, shall bear interest at the rate of 5 per cent per annum from the time found due until the same be paid by the United States.

2. Resolved, That the charge for one year's subsistence of the Cherokees after their arrival in the West is not a proper charge upon the fund of $5,000,000 aforesaid, but should have been paid independently of that fund by the United States.

3. Resolved, That the expense of removing the Cherokees to the West should, in like manner, have been borne by the United States and not charged to the fund of $5,000,000 aforesaid.

Commissioner Medill ignores this important report and its unanswerable argument. He quotes the unnamed commissioners whose argument we have answered, and who have been reversed by Congress in the force of their argument by the act of September 30, 1850, and February 27, 1851, wherein the very items they argued chargeable against the trust fund were refunded by Congress, to wit, in the matter of subsistence and amounts paid to Government agents.

These commissioners are also reversed by the fourth article of the treaty of 1846, which substantially agrees with the old settlers, that removal shall not be charged to the $5,000,000 fund. We regret that among the Government publications we have been unable to find the report of the commissioners quoted by Commissioner Medill.

We did find, however, a most important report of the United States commissioners appointed by the Secretary of War to inquire into the complaints and difficulties of the Cherokees, who made their report on January 17, 1845, of 143 pages, to wit: Hon. Roger Jones, Adjutant-General United States Army; Hon. Richard B. Mason, lieutenant-colonel First Dragoons; Governor Pierce M. Butler, United States agent. These commissioners make the following statement (p. 12, Senate Doc. No. 140, Twenty-eighth Congress, second session, vol. 8).

THE TREATY PARTY

COMPLAIN OF THE NONRECEIPT OF THE PER CAPITA, ETC.

The commissioners agree with the complainants that a large balance of money is due from the United States, under treaty stipulations, for per capita division among the Cherokee people.

The treaty of 1835 guarantees the payment of $5,000,000 by the United States for the Cherokee lands, subject to the deduction of moneys to be expended on certain objects enumerated in the fifteenth article, among which are removal and subsistence.

Had legislation on the subject terminated here, the United States were bound so to administer the fund that the price of the lands should not be exhausted by the expenses of removal.

The sums of $20, the commutation allowed in the eighth article for transportation, and of $33.33 for subsistence, would seem to have been the limits beyond which no further charge for these objects could properly be made upon the five millions. But the Government, in the exercise of a benevolent magnanimity, consulting not so much pecuniary considerations as the feelings and comfort of the unfortunate people, gave the removal of the mass of them into the hands of agents chosen from among themselves, instead of offering the contract for their transportation, like that of so many cattle, to the lowest bidder.

Surely, if these expenses proved greater than anticipated by the treaty it is not just to make, from the fund voted as the price of the Cherokee lands, deductions far exceeding what were contemplated when that price was fixed. Still less is it just that that portion of the Cherokee people, "the treaty party so-called" who had commuted for their removal, should have their reasonable expectations of compensation for the homes they had surrendered defeated, by the exhaustion of their consideration money in the removal of the other portion.

Under the first treaty arrangement, then, the United States would seem to owe the Cherokees all the excess that has been paid for removal and subsistence out of the five millions, over the amount that would result from allowing for each individual removed the respective sums of $20 and $33.33, stipulated in the treaty as commutation.

But there are yet to be considered certain supplementary articles to the treaty and the subsequent legislation.

The second supplementary article, concluded March 1, 1836, is to this effect: That whereas it was supposed by the Cherokee people that the Senate, in fixing the sum of five millions as the value of the Cherokee lands, did not intend to include the amount which might be required for removal, the subject was to be referred to the Senate, that, if it did not intend the five millions to include the objects specified, such further provision might be made as might appear to be just.

The third supplementary article says: "It is therefore agreed that the sum of $600,000 shall be, and the same is hereby, allowed to the Cherokee people, to include the expense of their removal:" and in the sequel concludes: "but it is expressly understood, that the subject of this article is merely referred hereby to the consideration of the Senate; and if they shall approve the same, then this supplement shall remain part of the treaty."

The Senate did approve and ratify these articles, and Congress made the "further provision" called for. The conclusion seems just that the Government thereby ratified the above expressed understanding of their intentions, and debarred themselves from making any charge upon the five millions for the expenses of removal.

If this construction be correct, then are the United States bound to restore to the compensation fund, out of the whole sum paid for removal, such portion as has been charged upon the general fund; and also to restore such moneys as may have been paid out of that fund for "objects of a contingent nature" not enumerated in the treaty. Of course, what has been said in considering the complaints of the "treaty party" applies to the whole body of the emigrants. The commissioners are of opinion that the nonreceipt of this per capita is the germ of discontent—the great hindrance to the harmony and quiet of the complaining parties and of the whole people.

As a final and certain means of restoring harmony and promoting the improvement of the Cherokee people the commissioners beg leave strongly and respectfully to recommend that their authorities be heard in support of their claims on the United States, and that a new treaty be concluded on the just and liberal basis set forth and promised in the letter of His Excellency, President Tyler, September 20, 1841 (p. —). By such a measure it is believed not only will the good faith of the United States be triumphantly shown, but they will be more than repaid for this liberal policy, etc."

Commissioner Medill entirely ignores this important report, although these high commissioners were sent to make report on these very matters and did make report to the Secretary of War the very year preceding the treaty.

The only argument made by Commissioner Medill which we have not completely answered is his argument on page 7, Ex. Doc. 65, that, had the Government intended to assume the whole cost of removal, an estimate would have been made of the probable cost of removal and of the probable amount of the claims in order that the additional amount to be allowed might be made to embrace all; he says this was not done. Our answer is, first, that it was done, and second, that it was not necessary to be done.

Manifestly, the absence of an estimate demonstrates nothing. Many appropriations are made by Congress without an estimate in which Congress does intend to assume the whole cost; this has been done in thousands of cases. But in regard to the $600,000 for spoliations and removals, there was an estimate fully set forth, in Schermerhorn's proposed treaty of October 18, 1835, in the schedule thereof, to wit, for spoliations, $250,000, and $255,000 for removal. And article 3, supplement 1835, shows on its face that the $600,000 was estimated "to include the expense of their removal," etc., and leave a surplus for the education fund.

How could the $600,000 include the cost of removal unless it were estimated as more than enough?

How could there be a surplus for the education fund unless it were estimated that $600,000 was more than sufficient to pay the removal, etc?

It is notorious that the Secretary of War, May 25, 1838, made a formal estimate for a sum sufficient to pay the cost of removal of every single Cherokee (although it proved insufficient because of the terrible drought and winter which ensued).

Commissioner Medill says if the Government had intended to assume the whole cost of removal an estimate would have been made of the probable cost of removal, and as this was plainly done, according to his logic, the United States did assume the whole cost of removal.

Commissioner Medill says there was no estimate, and therefore the United States did not assume the whole cost of removal. He is wrong in his facts, and if his facts were right he would be wrong in his logic.

Yet, on his report, Mr. Albion K. Paris, Second Comptroller, and John M. McCalla, Second Auditor, make their report on the amount due the Cherokees, in which they say they take—

> As a basis for our calculation the statement of amounts made by the Commissioner of Indian Affairs in his report of May 10, 1848. (Senate Ex. Doc. No. 12, Thirtieth Congress, second session.)

And thus the report of Commissioner Medill became responsible for the gross wrong perpetrated upon the Cherokees in the matter of their per capita fund due them under the treaty of 1835 and 1846, and even promised them by President Jackson and their arch enemy Schermerhorn. In contrast with the obscure, unjust, and willfully perverted report of Commissioner Medill, with its sins of commission and still greater sins of omission, we appeal to the report of the Committee on Indian Affairs of the United States Senate through Senator Jarnagin and of Adjutant-General Jones, Governor Butler, and Lieutenant-Colonel Mason, but above all to the able, exhaustive, and unanswerable report of the experts appointed by the Interior Department as authorized and directed by Congress, to bring this matter to a settlement which Attorney-General Shields, in his report submitted to Congress, declared should be final. This report from pages 76 to 88, in Senate Doc. No. 215, Fifty-sixth Congress, first session, we make as our concluding answer to every objection which could be suggested adverse to our claim. Earnestly praying and respectfully insisting upon a prompt report in our favor and the settlement of our just claim, we have the honor to be,

Your most obedient and humble servants,

THE EASTERN OR EMIGRANT CHEROKEES
(SO CALLED) OF THE INDIAN TERRITORY,
DAVID MUSKRAT,
DANIEL GRITTS,
FRANK J. BOUDINOT,
Executive Committee.

ROBERT L. OWEN, *Of Counsel,*

EXHIBITS.

THE CHEROKEE NATION OF INDIANS.

A NARRATIVE OF THEIR OFFICIAL RELATIONS WITH THE COLONIAL AND FEDERAL GOVERNMENTS.

BY CHAS. C. ROYCE.

[1835.]

(Pages 276, 277.)

The memorial of the Cherokee Nation respectfully showeth, that they approach your honorable bodies as the representatives of the people of the United States, intrusted by them under the Constitution with the exercise of their sovereign power, to ask for protection of the rights of your memorialists and redress of their grievances.

They respectfully represent that their rights, being stipulated by numerous solemn treaties, which guaranteed to them protection, and guarded, as they supposed, by laws enacted by Congress, they had hoped that the approach of danger would be prevented by the interposition of the power of the Executive, charged with the execution of treaties and laws, and that when their rights should come in question they would be finally and authoritatively decided by the judiciary, whose decrees it would be the duty of the Executive to see carried into effect. For many years these their just hopes were not disappointed.

The public faith of the United States, solemnly pledged to them, was duly kept in form and substance. Happy under the parental guardianship of the United States, they applied themselves assiduously and successfully to learn the lessons of civilization and peace, which, in the prosecution of a humane and Christian policy, the United States caused to be taught them. Of the advances they have made under the influence of this benevolent system they might a few years ago have been tempted to speak with pride and satisfaction, and with grateful hearts to those who have been their instructors. They could have pointed with pleasure to the houses they had built, the improvements they had made, the fields they were cultivating; they could have exhibited their domestic establishments and shown how, from wandering in the forests, many of them had become the heads of families, with fixed habitations, each the center of a domestic circle like that which forms the happiness of civilized man.

They could have shown, too, how the arts of industry, human knowledge, and letters had been introduced among them, and how the highest of all the knowledge had come to bless them, teaching them to know and to worship the Christian God, bowing down to him at the same seasons and in the same spirit with millions of His creatures who inhabit Christendom, and with them embracing the hopes and promises of the gospel. But now each of these blessings has been made to them an instrument of the keenest torture. Cupidity has fastened its eye upon their lands and upon their homes, and is seeking by force, and by every variety of oppression and wrong, to expel them from their lands and their homes, and to tear them from all that has become endeared to them. Of what they have already suffered it is impossible for them to give the details, as they would make a history. Of what they are menaced with by unlawful power every creature of the United States who reads the public journals is aware.

In this, their distress, they have appealed to the judiciary of the United States, where their rights have been solemnly established. They have appealed to the Executive of the United States to protect these rights according to the obligations of treaties and the injunctions of the laws. But this appeal to the Executive has been made in vain. In the hope that by yielding something of their clear rights they might succeed in obtaining security for the remainder, they have lately opened a correspondence with the Executive, offering to make a considerable cession from what has been reserved to them by solemn treaties, only upon condition that they might be protected in the part not ceded; but their earnest supplication has been unheeded, and the only answer they can get informs them, in substance, that they must be left to their fate or renounce the whole. What that fate is to be, unhappily, is too plain.

The State of Georgia has assumed jurisdiction over them, has invaded their territory, has claimed the right to dispose of their lands, and has actually proceeded to dispose of them, reserving only a small portion to individuals, and even these portions are threatened and will no doubt soon be taken from them. Thus the nation is stripped of its territory and individuals of their property without the least color of right and in open violation of the guaranty of treaties. At the same time the Cherokees, deprived of the protection of their own government and laws, are left without the protection of any other laws; outlawed, as it were, and exposed to indignities, imprisonment, persecution, and even to death, though they have committed no offense whatever save and except that of seeking to enjoy what belongs to them and refusing to yield it up to those who have no pretense of title to it.

Of the acts of the legislature of Georgia your memorialist will endeavor to furnish copies to your honorable bodies, and of the doings of the individuals they will furnish evidence if required. And your memorialists further respectfully represent that the Executive of the United States has not only refused to protect your memorialists against the wrongs they have suffered and are still suffering at the hands of unjust cupidity, but has done much more. It is but too plain that for several years past the power of the Executive has been exerted on the side of their oppressors and is cooperating with them in the work of destruction. Of two particulars in the conduct of the Executive your memorialists would make mention, not merely as matters of evidence, but as specific subjects of complaint in addition to the more general ones already stated.

The first of these is the mode adopted to oppress and injure your memorialists under color of enrollments for emigration. Unfit persons are introduced as agents, acts are practiced by them that are unjust, unworthy, and demoralizing, and have no object but to force your memorialists to yield and abandon their rights by making their lives intolerably wretched. They forbear to go into particulars, which nevertheless they are prepared, at a proper time, to exhibit.

The other is calculated also to weaken and distress your memorialists, and is essentially unjust. Heretofore, until within the last four years, the money appropriated by Congress for annuities has been paid to the nation, by whom it was distributed and used for the benefit of the nation. And this method of payment was not only sanctioned by the usage of the Government of the United States, but was acceptable to the Cherokees.

Yet, without any cause known to your memorialists and contrary to their just expectations, the payment has been withheld for the period just mentioned, on the ground, then for the first time assumed, that the annuities were to be paid, not as hitherto, to the nation, but to the individual Cherokees, each his own small fraction, dividing the whole according to the numbers of the nation. The fact is that for the last four years the annuities have not been paid at all.

The distribution in this new way was impracticable if the Cherokees had been willing thus to receive it, but they were not willing; they have refused and the annuities have remained unpaid. Your memorialists forbear to advert to the motives of such conduct, leaving them to be considered and appreciated by Congress. All they will say is that it has coincided with other measures adopted to reduce them to poverty and despair and to extort from their wretchedness a concession of their guaranteed rights. Having failed in their efforts to obtain relief elsewhere, your memorialists now appeal to Congresss, and respectfully pray that your honorable bodies will look into their whole case, and that such measures may be adopted as will give them redress and security.

(Page 284.)

REPORT OF MAJOR DAVIS (MARCH 5, 1836).

I conceive that my duty to the President, to yourself, and to my country reluctantly compels me to make a statement of facts in relation to a meeting of a small number of Cherokees at New Echota last December, who were met by Mr. Schermerhorn, and articles of a general treaty entered into between them for the whole Cherokee Nation. * * * I should not interpose in the matter at all, but I discover that you do not receive impartial information on the subject; that you have to depend upon the ex parte, partial, and interested reports of a person who will not give you the truth. I will not be silent when I see that you are about to be imposed on by a gross and base betrayal of the high trust reposed in Rev. J. F. Schermerhorn by you. His conduct and course of policy was a series of blunders from first to last. * * * It has been wholly of a partisan character.

Sir, that paper * * * called a treaty is no treaty at all, because not sanctioned by the great body of the Cherokees and made without their participation or assent. I solemnly declare to you that upon its reference to the Cherokee people it would be instantly rejected by nine-tenths of them and I believe by nineteen-twentieths of them. There were not present at the conclusion of the treaty more than 100 Cherokee voters, and not more than 300 including women and children, although the weather was everything that could be desired. The Indians had long been notified of the meeting, and blankets were promised to all who would come and vote for the treaty. The most cunning and artful means were resorted to to conceal the paucity of numbers present at the treaty. No enumeration of them was made by Schermerhorn. The business of making the treaty was transacted with a committee appointed by the Indians present, so as not to expose their numbers.

The power of attorney under which the committee acted was signed only by the president and secretary of the meeting, so as not to disclose their weakness. * * * Mr. Schermerhorn's apparent design was to conceal the real number present, and to impose on the public and the Government upon this point. The delegation taken to Washington by Mr. Schermerhorn had no more authority to make a treaty than any other dozen Cherokees accidentally picked up for that purpose. I now warn you and the President that if this paper of Schermerhorn's called a treaty is sent to the Senate and ratified, you will bring trouble upon the Government and eventually destroy this (the Cherokee) nation. The Cherokees are a peaceable, harmless people, but you may drive them to desperation, and this treaty can not be carried into effect but by the strong arm of force.

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SPEECH OF GEN. R. G. DUNLAP (SEPTEMBER, 1836).

I forthwith visited all the posts within the first three States and gave the Cherokees (the whites needed none) all the protection in my power. * * * My course has excited the hatred of a few of the lawless rabble in Georgia, who have long played the part of unfeeling petty tyrants, and that to the disgrace of the proud character of gallant soldiers and good citizens. I had determined that I would never dishonor the Tennessee arms in a servile service by aiding to carry into execution at the point of the bayonet a treaty made by a lean minority against the will and authority of the Cherokee people. * * * I soon discovered that the Indians had not the most distant thought of war with the United States, notwithstanding the common rights of humanity and justice had been denied them.

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REPORT OF GEN. JOHN E. WOOL (FEBRUARY 18, 1837).

I called them (the Cherokees) together and made a short speech. It is, however, vain to talk to a people almost universally opposed to the treaty and who maintain that they never made such a treaty. So determined are they in their opposition that not one of all those who were present and voted at the council held but a day or two since, however poor or destitute, would receive either rations or clothing from the United States lest they might compromise themselves in regard to the treaty. These same people, as well as those in the mountains of North Carolina, during the summer past preferred living upon the roots and sap of trees rather than receive provisions from the United States, and thousands, as I have been informed, had no other food for weeks.

Four months later General Wool said (p. 286): Had Curry lived he would assuredly have been killed by the Indians. It is a truth that you have not a single agent, high or low, that has the slightest moral control over the Indians. It would be wise if persons appointed to civil stations in the nation could be taken from among those who have had nothing to do with making the late treaty.

(Page 290:)

GOVERNOR GILMER, OF GEORGIA (MAY, 1838).

* * * I can give it no sanction whatever. The proposal could not be carried into effect but in violation of the rights of this State. * * * It is necessary that I should know whether the President intends, by the instructions to General Scott, to require that the Indians shall be maintained in their occupancy by an armed force in opposition to the rights of the owners of the soil. If such be the intention, a direct collision between the authorities of the State and the General Government must ensue. My duty will require that I shall prevent any interference whatever by the troops with the rights of the State and its citizens. I shall not fail to perform it.

HOUSE EX. DOC. NO. 453, VOL. II, PART 1, 1837-38, TWENTY-FIFTH CONGRESS, SECOND SESSION.

(April 6, 1838:)

Maj. Gen. Alex. McComb, commander in chief, directs Maj. Gen. W. Scott to prepare to remove Cherokees by military force, as "it is apprehended that the mass of the nation, under some delusion, does not intend to remove to the country provided for them under the stipulations of the treaty entered into with them on the 29th of December, 1835."

(May 10, 1838:)

General Scott (p. 11) issues an address to the Cherokees as follows:

Major-General Scott, of the United States Army, sends to the Cherokee people remaining in North Carolina, Georgia, Tennessee, and Alabama this

ADDRESS.

CHEROKEES: The President of the United States has sent me with a powerful army to cause you, in obedience to the treaty of 1835, to join that part of your people who are already established in prosperity on the other side of the Mississippi. Unhappily, the two years which were allowed for the purpose you have suffered to pass away without following, and without making any preparation to follow, and now, or by the time that this solemn address shall reach your distant settlements, the emigration must be commenced in haste, but I hope without disorder. I have no power, by granting a further delay, to correct the error that you have committed. The full moon of May is already on the wane, and before another shall have passed away every Cherokee man, woman, and child in those States must be in motion to join their brethren in the far West.

My friends, this is no sudden determination on the part of the President, whom you and I must now obey. By the treaty the emigration was to have been completed on or before the 23d of this month, and the President has constantly kept you warned, during the two years allowed, through all his officers and agents in this country, that the treaty would be enforced.

I am come to carry out that determination. My troops already occupy many positions in the country that you are to abandon, and thousands and thousands are approaching from every quarter to render resistance and escape alike hopeless. All those troops, regular and militia, are your friends. Receive them and confide in them as such. Obey them when they tell you that you can remain no longer in this country. Soldiers are as kind hearted as brave, and the desire of every one of us is to execute our painful duty in mercy. We are commanded by the President to act toward you in that spirit, and such is also the wish of the whole people of America.

Chiefs, headmen, and warriors, will you, then, by resistance compel us to resort to arms? God forbid. Or will you by flight seek to hide yourselves in mountains and forests, and thus oblige us to hunt you down? Remember that in pursuit it may be impossible to avoid conflicts. The blood of the white man or the blood of the red man may be spilt, and if spilt, however accidentally, it may be impossible for the discreet and humane among you or among us to prevent a general war and carnage. Think of this, my Cherokee brethren. I am an old warrior and have been present at many a scene of slaughter; but spare me, I beseech you, the horror of witnessing the destruction of the Cherokees.

Do not, I invite you, even wait for the close approach of the troops, but make such preparations for emigration as you can, and hasten to this place, to Ross's Landing or to Gunter's Landing, where you all will be received in kindness by officers selected for the purpose. You will find food for all and clothing for the destitute at either of these places, and thence at your ease and in comfort be transported to your new homes according to the terms of the treaty.

This is the address of a warrior to warriors. May his entreaties be kindly received, and may the God of both prosper the Americans and Cherokees and preserve them long in peace and friendship with each other.

WINFIELD SCOTT.

CHEROKEE AGENCY, *May 10, 1838.*

(May 17, 1838:)

General Scott (p. 8) issues General Order, No. 25, announcing to the troops "that, with them, he has been charged by the President to cause the Cherokee Indians yet remaining in North Carolina, Georgia, Tennessee, and Alabama to remove to the West, according to the terms of the treaty of 1835;" announces his staff, divides the country into districts to be commanded by the officers severally named, and arranges plans of operation, etc.

(June 7, 1838:)

General Scott (p. 18) acknowledges to Hon. J. R. Poinsett, Secretary of War, the receipt of his letter of 23d of May, "inclosing a copy of the proposals made by the Department to the Cherokee delegation, of a date five days earlier," and says, among other things:

"The peace, nay, the lives of the Indians require that they should be immediately removed from Alabama, as well as from Georgia, Tennessee, and North Carolina. Accordingly I am glad to find myself instructed to continue my operations, although I should be extremely delighted if something more could be done to soothe the feelings of the Cherokees and to compensate them in money, at least, in part discharge of that great debt of justice due from the United States."

General Scott further says:

"There is remaining in the Cherokee country no authority or no set of agents to sign any stipulation or contract in the least degree binding on the Indians. The whole political power of the tribe is, at least for the time, in the hands of the delegation at Washington; and should that delegation, or, rather, Mr. John Ross (whom all obey), ever present himself to me, I do not see that I should have, under the proposals, power to do more than to take the business of emigrating the Indians out of the hands of the present superintendent and to put it into his. This would, no doubt, be highly agreeable to the Ross party, and in the same degree, without many guards, offensive if not fatal to the opposite party—a mere fraction, but consisting of individuals of great wealth and respectability."

(June 15:)

General Scott reports (p. 22) to Secretary of War:

"A few families and individuals have, however, it is known, taken refuge in the mountain parts of three districts. With such exceptions Georgia may be said to be cleared of Cherokees, and in three or five days as much will have been done in Tennessee, North Carolina, and Alabama."

(June 18:)

General Scott reports (p. 26):

"I have, with the concurrence of the superintendent of Cherokee emigration and after the fullest inquiries, determined to suspend further emigration until the 1st of September next. Not only the comfort, but the safety, of the Indians in reference to the advanced season has forced this decision upon me. In the meantime I propose to hold the prisoners and voluntary emigrants in convenient camps, guarded by the regular troops, around the two great emigrating depots."

CHEROKEE PETITIONS.

JUNE 9, 1838.

We have heard with intense emotions your address of the 10th of May. We have, with more or less distinctness, heard rumors of subsequent orders and of their execution. We have considered them with all the seriousness and care of which we were capable and which their portentous character demands. A most formidable military force is arrayed against us for declining to comply with the requirements of the instrument of New Echota. If this be a crime, sir, it has been committed in the honesty of our hearts and in pursuance of the principles of justice, in which we have been instructed by your own most honored chiefs. But, sir, we do not appear before you in this our humble address to discuss the merits of that compact, which, even under the most appalling circumstances, we dare not in conscience recognize in any other character than that of fraud upon the United States as well as upon the Cherokees. We approach you, sir, in the character of individuals of a besieged nation. We offer no resistance to your troops. We seek not to hide ourselves by flight. We are at all times accessible, as you have had ample proof. We are entirely at your mercy. We are altogether in your hands. But, sir, bad as our condition is, we can not but rejoice that we have fallen into the hands of a commander who can appreciate our feelings as lovers of our country and lovers of right. We venerate the virtues of the patriot chieftain, whose life has been hazarded in defense of his country's rights; who has braved the terrors of the battlefield in defense of the very principles to which we humbly presume to cling. We respect the humanity which breathes through your orders, the care for our comfort which they evince, and the deprecation of destruction of the Cherokees which they express.

In this dark hour it is consoling to be told that our father, the President, has commanded the duties with which you are charged to be executed in mercy and that "such is the wish of the whole American people." It is consoling also to perceive that the same sentiment is expressed in the President's communication to the governors concerned and in the opinion of the Secrerary of War, approved by the President and by him laid before Congress, as well as in the honorable Secretary's letter to yourself of the 23d of May.

Indulging also the assurance of your own good feeling toward our people, as well from your communications as from the known magnanimity and generosity of your character, we can not but entertain the hope that this our humble address will meet with your favorable regard, especially as our requests are in perfect conformity with the expressed sentiments of high functionaries of Government and the whole American people.

Our request, sir, is this: That the capture and emigration of our people may not be executed with so much haste at the present season of the year, as threatening an amount of suffering, disease, and death, so frightful as to excite forebodings little short of the extermination of our whole race. The journey to Arkansas has often been performed from this country. Our people are well acquainted with the results which have uniformly attended it.

Under favorable conditions, in healthful seasons, with willing emigrants, and in numbers so small as to admit of their being immediately accommodated by their friends with shelter from worst effects of the insalubrity of the climate, an alarming amount of sickness and death has been the constant attendant. And what can be expected if the remainder of the 16,000 or 17,000 souls be captured in one day and sent off at once in this sickly season? In complying with this our most importunate request we can conceive no disadvantage which it would occasion to the service with which you are charged, as the business of capturing our whole people can be effected any day you may be pleased to order it. With regard to those already made prisoners, our request is that they may be indulged with the privilege of a parole until the season will admit of their emigrating with greater security to their health. With regard to the faithful observance of the parole, we are willing to pledge ourselves to guarantee their punctual appearance at the time you may prescribe, and if you should think the guarantee of the national council necessary, we hesitate not to say that it shall be given as early as a session can be convened.

We ask for no delay that can in the least interfere with the measure of government as expressed in the documents referred to. It is very evident, sir, that the emigrants, if taken off at this time, will arrive there at the sickly season. They will have no shelter, no furniture, few tools, and no health to use them so as to prepare for their own comfort and that of their families, so they will be exposed throughout the whole season to the ravages of that sickly climate; whereas in the fall they would arrive at the commencement of the healthful season, which would afford them an opportunity to provide for the comfort of themselves and families. To be taken by thousands from this healthful country and set down on the banks of Arkansas in the month of July, or to be detained on that sickly stream on account of low waters, far short of the place of destination, is a thought at which our hearts sicken; our wives and children, our aged and infirm, and our strongest men, laid prostrate together, is a consideration which breaks our hearts, which unmans our firmest nerve.

In conclusion, sir, permit us to appeal to your magnanimity, to your humanity, to your compassion; the lives of our whole nation are at your disposal; at your word thousands of people may die and their names be forgotten; at your word they may live; and by the favor of Providence their posterity may bless your name and transmit in gratitude its remembrance to the latest generation. Assuredly, sir, this is no common occurrence. The annals of time exhibit few instances in which an individual is placed in a condition to confer benefits lasting and substantial on a great portion of our race.

We add no more. With the most solicitous anxiety we await the result of this application. Your favorable attention will cheer our hearts; your rejection of our suit will seal our despair.

With the most profound respect, we are, sir, your humble servants,

GEORGE LOWRY.
THOMAS FOREMAN.
(And Others.)

Major-General SCOTT, U. S. A.,
Commanding Cherokee Nation.

P. S.—A report has reached us that several hundred of our people now at or near Ross Landing are to be sent off in a few days. Pardon us, sir, if we can not conceal our anxiety on their account. We feel for them as friends condemned to die.

CHEROKEE AGENCY, *June 11, 1838.*

SIR: We, your humble petitioners (and who, before this may reach your eyes will, no doubt, most of us, be your prisoners), ask permission, very respectfully, to represent:

That the orders of our great ally and protector, the President of the United States, as contained in your address of the 10th of May, has filled our mind with astonishment and dismay. We have relied with unwavering confidence on the good faith of the United States. When told by the makers of the unjust paper of New Echota that we were deceiving ourselves by doing so, we could not believe them; and we were fully persuaded that all our difficulties originated in the corrupt principles and practices of the promoters and makers of that instrument on both sides, and that nothing but a fair representation of the case was required to insure to us ample justice. We solicited investigation with all earnestness. A special agent from the President came to our last general council for that purpose. In all frankness and friendship he was hailed and honored at our council ground. Nothing was concealed from him. We anticipated a fair report to the President and an immediate abrogation of that perfidious instrument.

That report has lately been published. We have read it with unmingled satisfaction. It is the truth, and the maker of it will long be remembered with gratitude and honor by the Cherokee people.

Why the execution of that compact should be urged with such precipitancy, in the face of that illustration of its character, we can not conceive, nor is this the place to discuss that point. Our present object is to address yourself, sir, as having the unquestioned control of our destinies, so far as physical force is concerned; to propitiate your compassion in the exercise of your power, so as to mitigate horrors which must result from carrying into effect the course intimated in a part of your address, which says, "that before another moon shall have passed away every Cherokee, man, woman, and child, must be in motion to join their brethren in the far West." This, sir, would bring us to Arkansas just at the beginning of the sickly season; and it can not but be hazardous in the extreme, and more fearfully so for constitutions habituated to this healthful atmosphere, to crowd together, at so unfavorable a season, a whole nation of people, with all the conditions of age and infirmity and sex and helplessness, in all the varieties which such a concourse must comprise, and without houses, to be exposed to the deleterious fogs and winds and heats, most fatal to health. The inevitable consequence of such a course must be most appalling ravage of disease and death. This measure, sir, we most solemnly and most earnestly deprecate. Our position is urgent, sir; but we bespeak your patience to suffer us to urge the most pressing considerations of humanity and of mercy. We urge it, sir, by the sentiments expressed by yourself, that "it is the desire of everyone of us to execute this painful duty in mercy." "We are commanded," you say, "by the President to act toward you in that spirit, and such also is the wish of the whole of the American people." If it be painful to you, sir, to contemplate the work, what must be the feelings of the Cherokees, who are to be the subjects of the disaster and ruin which must ensue? For, sir, if we are hurried off at this season, we must, unavoidably, fall a prey to that cruel climate, and our complaints will be forever silenced.

Do not upbraid us, sir, with neglecting to make preparation and with wasting the time allowed for that purpose. The President can not do so with Colonel Mason's report in his hands. The President has made no treaty with us on the basis of removal, although we have, by our delegation, asked him to do so. We can not but feel aggrieved to be charged with neglect and unfaithfulness by a power to which we dare not reply. Your age and experience can appreciate this our feeling of mortification and feebleness.

You have us completely in your power, sir. On this point there is no controversy. Our whole people are your prisoners, or expect to be so in a few days; therefore, whatever you may do to alleviate our distresses must be viewed by us as emanating from your own magnanimity and the feeling of humanity, and must be so viewed by the intelligent and virtuous of the United States and of other nations, who will wear for you a wreath of fairer laurels than can be gathered by the destruction of the unoffending, unarmed, and unwarlike Cherokees.

Pardon, sir, the freedom with which we have urged our anxious plea. Our case is pressing and will admit of no delay. We ask most respectfully and most humbly that we may not be sent to the West till fall, when the prospect of health will be more favorable. Our humble petition is before you; we hope for a favorable answer.

GEORGE LOWRY.
L. W. HILDERBRAND.
(And Others.)

Major-General SCOTT, U. S. A.,
Cherokee Country.

HEADQUARTERS EASTERN DIVISION,
Cherokee Agency, June 19, 1838.

GENTLEMEN: I have received two memorials numerously signed by yourselves and other Cherokees, dated, respectively, the 9th and 11th of this month, praying:

1. That the collection of the Cherokees by the troops for emigration may be delayed or relaxed, and
2. That the families and individuals so collected, or who have voluntarily come in, may not be sent off to the west of the Mississippi before the next autumn.

Under my instructions from the President no delay or relaxation can be permitted in the collection of the whole Cherokee people east preparatory to their early emigration west.

In respect to the second proposition I am disposed to grant indulgence, if the chiefs and headmen present will give me a written pledge for themselves and the other chiefs and headmen absent to the following conditions:

1. That each will discountenance and suppress among the Cherokee people the idea that there is the slightest intention on the part of the United States to suspend the emigration beyond the 1st of September next, for in all that month it is my solemn expectation and purpose to put in motion from the emigrating depots every Cherokee east for the Cherokee country west of the Mississippi.
2. That the chiefs and headmen will, in good faith, exert their authority to prevent their people from escaping or straggling from the camps which may be assigned, or leaving the latter beyond the limits prescribed, except on special written permissions, to be signed by the nearest commander of troops or by the superintendent of Cherokee emigration.
3. That the same authority will be employed to preserve good order among the Indians in the respective camps, to prevent drinking, to prevent any injury to the citizens or their property, and to aid the emigrating officers and agents in obtaining an exact list or register, by names, families, ages and sexes, of all the Cherokees who are to be emigrated.

Expecting a prompt acceptance of the foregoing conditions, I remain,
Your friend,

WINFIELD SCOTT.

Messrs. G. LOWRY, T. FOREMAN, and Others.

CHEROKEE AGENCY, *June 19, 1838.*

SIR: We have the honor of acknowledging the reception of your communication of the present instant in answer to our petitions of the 9th and 11th of the present month. Sir, we shall ever feel under much obligation to you for the indulgence which you seem disposed to allow us upon the conditions specified in your communication. Without specifying particulars we respectfully accept these conditions, and hereby pledge ourselves to use our best efforts to have them strictly complied with.

We have, sir, the honor to be, your friends,

GEORGE LOWRY.
LEWIS ROSS.
(And Others.)

Major-General SCOTT, U. S. A.,
Commanding.

EMIGRATION OF INDIANS.

RESOLUTION OF THE CHEROKEE COUNCIL.

Whereas the whole population of the Cherokeee Nation have been captured by the order of the President of the United States in order to their transportation from the land of their fathers to the west of the river Mississippi, in execution of the alleged stipulations of an instrument purporting to be a treaty made at New Echota in 1835, but against the validity of which the Cherokees have always earnestly protested;

And whereas Maj. Gen. Winfield Scott, having the execution of this order in charge, had actually commenced their transportation, but from motives of humanity was pleased kindly to entertain the memorials presented to him by a part of our people on behalf of the whole, and in compliance with their prayers magnanimously agreed to suspend their further transportation until the 1st of September;

And whereas our delegation has just returned from Washington City, and having important suggestions to make to the commanding general, under a special understanding with the honorable Secretary of War, in reference to the removal of the nation to the West, have submitted the matter to this council for advice:

Resolved, therefore, by the national committee and council and people of the Cherokee Nation in general council assembled, That it is the decided sense and desire of this general council that the whole business of the emigration of our people shall be undertaken by the nation, and the delegation are hereby advised to negotiate the necessary arrangements with the commanding general for that purpose.

RICHARD TAYLOR,
President of the National Committee.
E. HICKS.
(And Others.)

AQUOHEE CAMP, *July 21, 1838.*

No. 1.

PROPOSITION OF CHEROKEE DELEGATION TO GENERAL SCOTT.

AMOKE DISTRICT, *Aquohee Camp, July 23, 1838.*

SIR: In respectfully presenting for your consideration the following suggestions in relation to the removal of the Cherokee people to the West it may be proper very briefly to advert to certain facts which have an important bearing on the subject.

It is known to you, sir, that the undersigned, the delegates of the Cherokee Nation, submitted to the honorable the Secretary of War the project of a treaty on the basis of a removal of the Cherokee Nation from "all the lands now occupied by them eastward of the Mississippi," and on terms the most of which the honorable Secretary expresses himself as "not willing to grant." The present condition of the Cherokee people is such that all dispute as to the time of emigration is set at rest. Being already severed from their homes and their property—their persons being under the absolute control of the commanding general—and being altogether dependent on the benevolence and humanity of that high officer for the suspension of their transportation to the West at a season and under circumstances in which sickness and death were to be apprehended to an alarming extent, all inducements to prolong their stay in this country are taken away, and however strong their attachment to the homes of their fathers may be, their interest and their wishes now are to depart as early as may be consistent with their safety, which will appear from the following extract from their proceedings on the subject:

"*Resolved by the national committee and council and people of the Cherokee Nation in general council assembled,* That it is the decided sense and desire of this general council that the whole business of the emigration of our people shall be undertaken by the nation; and the delegation are hereby advised to negotiate the necessary arrangements with the commanding general for that purpose."

In conformity, therefore, with the wishes of our people, and with the fact that the delegation has been referred by the honorable the Secretary of War to conclude the negotiation in relation to emigration with the commanding general in the Cherokee country, we beg leave, therefore, very respectfully to propose—

That the Cherokee Nation will undertake the whole business of removing their people to the west of the river Mississippi;

That the emigration shall commence at the time stipulated in a pledge given to you by our people, as a condition of the suspension of their transportation until the sickly season should pass away, unless prevented by some cause which shall appear reasonable to yourself;

That the per capita expense of removal be based on the calculation of one wagon and team and six riding horses required for fifteen persons;

That the Cherokees shall have the selection of physicians and such other persons as may be required for the safe and comfortable conducting of the several detachments to the place of destination—their compensation to be paid by the United States.

We have the honor to be, your obedient servants,

JOHN ROSS.
ELIJAH HICKS.
(And Others.)

Maj. Gen. WINFIELD SCOTT, U. S. A.,
Commanding, etc.

No. 2.

HEADQUARTERS EASTERN DIVISION,
Cherokee Agency, July 25, 1838.

GENTLEMEN: I have received your letter submitting certain proposals, dated on the 23d instant.

On the part of the United States I am ready to place the whole business of completing the emigration of the Cherokee people remaining east of the Mississippi (with an exception to be mentioned; see the exception and note upon it below) to their new homes west of that river in the hands of such functionaries of the Eastern Cherokees as may exhibit to me from the same due authority to undertake and carry through the emigration, on the following conditions:

1. That the said functionaries and their people shall continue to observe and execute, in good faith, the promises given to me in writing by certain chiefs and head men, for themselves and people, present and absent, on the 19th ultimo.

2. That the said functionaries shall send intelligent Indian runners, to be furnished with written permission, signed by the commanding general, in search of, and to cause to be brought into the emigration, all Indian families and individuals who may remain out, and who are not citizens of the United States, or who have not received permission to remain in the States for the purpose of becoming denizens of the same.

3. That with the exception of such Indians as are or who may have obtained permission to remain in order to become citizens or denizens of the United States or of the States, also with the exception of such Indian families and individuals as may be permitted by the commanding general to emigrate themselves,* the said Cherokee functionaries shall cause all their people now remaining East, and who may at the time be able to travel, including fugitive Creeks among them, to be put in motion, in convenient detachments, either by land or water, and transported without unnecessary delays on the routes, to the Cherokee country west of the Mississippi, beginning the movement as early as the 1st of September next, and continuing to send off parties at intervals not exceeding three days, so that all the emigrants able to travel within that time shall be in motion for the West by the —— day of the ensuing month (October).

Such Indians as within that time may not be able to travel by land shall, if the rivers be not up, be permitted to remain until the next rise of waters, and in the meantime have as attendants a small number of their families or friends.

The foregoing conditions being agreed to, the United States, through me, are willing to stipulate to pay over to the Cherokee functionaries, from time to time, such portions of the moneys *appropriated for the emigration* as may seem reasonable to prepare for and carry it out.

I remain, gentlemen, etc.,

WINFIELD SCOTT.

Messrs. JOHN ROSS, E. HICKS, J. BROWN, E. GUNTER, S. GUNTER, SITUAKEE, WHITE PATH, R. TAYLOR, etc.

*Note for the Secretary of War (added):

This exception is intended for the benefit of such of the treaty-making party as may not choose to remove under the directions of Mr. Ross and his associates.

WINFIELD SCOTT.

RESOLUTION OF THE CHEROKEE COUNCIL.

Resolved by the committee and council and people in general council assembled, That Messrs. John Ross, Richard Taylor, Samuel Gunter, Edward Gunter, James Brown, Elijah Hicks, Sitiwagy, and White Path be, and they are hereby, authorized and fully empowered, on the part of the Cherokee Nation, to make and enter into any and all such arrangements with Maj. Gen. Winfield Scott, on the part of the United States, which they may deem necessary and proper, for effecting the entire removal of the Cherokee people from the east to the west of the Mississippi River; and also to enter into such further arrangements with the commanding general in the relation to the payment of such sums of money by the United States as may be necessary for the removal and subsistence of all the Cherokee people. And they are hereby further authorized and empowered to make any such selections of persons as they may deem necessary to aid and assist in the said removal of the Cherokees to the western country.

RICHARD TAYLOR,
President of the National Committee.
JAMES WOFFORD.
JOHN F. BALDRIDGE.
(And Others.)

AQUOHEE CAMP, *July 26, 1838.*

No. 3.

CHEROKEE AGENCY, EAST, *July 27, 1838.*

SIR: Your letter addressed to the undersigned on the 25th instant has been considered by the council and people assembled. *The accompanying resolution* confers the authority upon the late delegation to Washington City to close with you the necessary arrangements for the entire removal and subsistence of the Cherokees. We are now prepared to discharge the duties devolving upon us in relation to this matter.

To the conditions mentioned in your letter, upon which you are willing to place the whole business of managing the emigration in our hands, we are not disposed to object, but are ready and willing to accede to them with, however, this further understanding, that we may be allowed the two entire months of September and October to get all our people in motion for the West, and that we shall not be required positively to send off a detachment "at intervals not exceeding three days." In the commencement, the weather will be very warm, and before the arrival west of the last parties the winter will have commenced its rigor, and we would prefer some discretion as to the time and arrangement in dispatching detachments, especially as the time for the moving of the last will be fixed.

We have the honor to be, sir, most respectfully, your obedient servants,

JOHN ROSS.
EDWARD GUNTER.
(And Others.)

No. 4.

HEADQUARTERS EASTERN DIVISION,
Cherokee Agency, July 28, 1838.

GENTLEMEN: Your note of yesterday, in reply to mine of the 25th instant, is before me, as also the paper of the 26th, conferring upon you full powers to enter into arrangements with me for carrying on and completing the emigration of the Cherokee people remaining East to the west of the Mississippi.

The latter document is sufficient; and in reply to your note I will so far yield to your wishes as to say that the emigration must recommence on or before the 1st day of the ensuing September and be continued at short intervals, so as to be completed on or before the 20th of the following month, with the exception of such sick and superannuated Cherokees as may not be able to travel by land, and their necessary attendants. Should the rivers between this and your new country west be not navigable for steamboats in the meantime, I have further no objection to give to the more respectable heads of families, whose names may be presented to me for the purpose, special permissions to remain and to remove themselves and families on the first sufficient rise of those rivers, although such rise may not happen until after the 20th of October next.

The moneys which from time to time may be deemed necessary to prepare for and carry on the emigration you will please make estimates for, addressed to me, specifying the immediate objects, and if the estimates shall appear reasonable they shall be promptly complied with.

I remain, gentlemen, yours, with respect,

WINFIELD SCOTT.

Messrs. J. ROSS, E. GUNTER, E. HICKS, S. GUNTER, and Others,
Agents of the Cherokee Nation.

No. 5.

CHEROKEE AGENCY, EAST, *July 31, 1838.*

SIR: You have herewith the estimate of the expenses of each detachment of (1,000) Cherokees to be removed by land, as estimated for by this committee, and which is respectfully submitted for your consideration and approval.

It is desirable that immediate arrangements be entered upon for the *purchase* of wagons, etc., and the organization of detachments, as well as the timely establishment of depots for subsistence on the whole route. Your approval of the estimate being known, and the basis established to regulate expenditures, the immediate amount required will be specified.

With much respect, we have the honor to be, your obedient servants,

JOHN ROSS.
EDWARD GUNTER.
(And Others).

Maj. Gen. WINFIELD SCOTT, U. S. A.,
Commanding.

Estimate for the emigration of a party of 1,000 Cherokees to their country west of the Mississippi; distance, 800 miles; eighty days going.

50 wagons and teams, 20 persons to each wagon, at a daily expense of $350, including forage	$28,000
Returning, $7 each day for every 20 miles	14,000
250 extra horses, at 40 cents each per day	8,000
Ferriages, etc	1,000
80,000 rations, at 16 cents	12,800
Conductor, at $5 per day	400
Assistant, at $3 per day	240
Physician, at $5 per day	400
Returning, $15 for every hundred miles	120
Commissaries, at $2.50 per day	200
Assistant, at $2 per day	160
Wagon master, at $2.50 per day	200
Assistant, at $2 per day	160
Interpreter, at $2.50 per day	200
Total	65,880

RESOLUTION OF THE CHEROKEE COUNCIL.

Whereas the title of the Cherokee people to their lands is the most ancient, pure and absolute known to man. Its date is beyond the reach of human record; its validity confirmed and illustrated by possession and enjoyment antecedent to all pretense of claim by any other portion of the human race;

And whereas the free consent of the Cherokee people is indispensable to a valid transfer of the Cherokee title; and whereas the said Cherokee people have, neither by themselves nor their representatives, given such consent, it follows that the original title and ownership of said lands still rest in the Cherokee Nation, unimpaired and absolute:

Resolved, therefore, by the committee and council and people of the Cherokee Nation in general council assembled, That the whole Cherokee territory, as described in the first article of the treaty of 1819 between the United States and the Cherokee Nation, and also in the constitution of the Cherokee Nation, still remains the rightful and undoubted property of the said Cherokee Nation; and that all damages and losses, direct or indirect, resulting from the enforcement of the alleged stipulations of the pretended treaty of New Echota, are, in justice and equity, chargeable to the account of the United States;

And whereas the Cherokee people have existed as a distinct national community in the possession and exercise of the appropriate and essential attributes of sovereignty for a period extending into antiquity beyond the dates and records and memory of man;

And whereas these attributes, with the rights and franchises which they involve, have never been relinquished by the Cherokee people, but are now in full force and virtue;

And whereas the natural, political, and moral relations subsisting among the citizens of the Cherokee nation toward each other and toward the body politic can not in reason and justice be dissolved by the expulsion of the nation from its own territory by the power of the United States Government:

Resolved, therefore, by the national committee and council and people of the Cherokee Nation in general council assembled, That the inherent sovereignty of the Cherokee Nation, together with the constitution, laws, and usages of the same, are, and by the authority aforesaid are hereby declared to be, in full force and virtue, and shall continue so to be in perpetuity, subject to such modifications as the general welfare may render expedient.

Resolved further, That the Cherokee people, in consenting to an investigation of their individual claims, and receiving payment upon them and for their improvements, do not intend that it shall be so construed as yielding or giving their sanction or approval to the pretended treaty of 1835, nor as compromitting in any manner their just claim against the United States hereafter for a full and satisfactory indemnification for their country and for all individual losses and injuries.

Be it further resolved, That the principal chief be, and he is hereby, authorized to select and appoint such persons as he may deem necessary and suitable for the purpose of collecting and registering all individual claims against the United States, with the proofs, and to report to him their proceedings as they progress.

RICHARD TAYLOR,
President of the National Committee.
GOING SNAKE,
Speaker of the Council.

AUGUST 1, 1838.

Whereas the general council of the Cherokee Nation did, on the 26th day of July, by a special resolution, authorize the undersigned to enter into, in behalf of the nation, such arrangements with Major-General Winfield Scott as were deemed necessary and proper to place in the hands of the Cherokees the entire control and management of their emigration west of the Mississippi; and whereas the said arrangements having been entered into and the whole management of the emigration committed to the undersigned, and it being extremely desirable that there may be no delay in the preparatory arrangements for removal, and in order to expedite the completion of the same; therefore, it is by the committee, in behalf of the nation, determined that John Ross be, and he is hereby, fully authorized and empowered to make such requisitions for money as from time to time he may deem necessary for the Cherokee emigration, upon such officers of the United States Government as *may have the control of funds for this service,* and to receipt for the same for the Cherokee Nation.

RICHARD TAYLOR.
SAMUEL GUNTER.
(And Others.)

CHEROKEE AGENCY, *August 1, 1838.*

HEADQUARTERS EASTERN DIVISION,
Cherokee Agency, August 1, 1838.

GENTLEMEN: In your note of yesterday you estimate that $65,880 will be the necessary cost of every thousand Cherokees emigrated by land from this to their new country.

As I have already stated to some of you in conversation, I think the estimate an extravagant one.

Take the principal item or basis of your calculation—1 wagon and 5 saddle horses for every 20 souls.

I have already consented, with a view to lighten the movement by land, that all the sick, crippled, and superannuated of the nation should be left at the depots until the river be again navigable for steamboats. All heavy articles of property not wanted on the road may wait for the same mode of conveyance.

Deducting the persons just mentioned, I am confident that it will be found that among every thousand individuals, taken in families, without selection, there are at least 500 strong men, women, boys, and girls, not only capable of marching 12 or 15 miles a day, but to whom the exercise would be beneficial, and another hundred able to go on foot half that distance daily. There would then be left, according to your basis, but 200 souls to be steadily transported in 50 wagons, or only 4 to a wagon.

Now the wagons being large, and each drawn by five or six horses (as must be presumed from your high estimate of $7 for each wagon going and returning), it strikes me that one such team and five horses ought to accommodate, on the route, 30 or 35 emigrants, including subsistence for a day or two, from depot to depot.

I repeat that I do not absolutely reject or cut down your estimate (which I think also too high) in putting down the rations at 16 cents each. The whole expense of the emigration is to be paid out of appropriations already made by Congress, the general surplus of which is to go to the Cherokee Nation in various forms; therefore they have a direct general interest in conducting the movement as economically as comfort will permit. Nevertheless, for the reasons stated, I wish the several items of the estimate submitted to be reconsidered.

I remain, gentlemen, yours, respectfully,

WINFIELD SCOTT.

Messrs. J. ROSS, E. HICKS, J. BROWN, and Others,
Agents, etc.

No. 7.

CHEROKEE AGENCY, EAST, *August 2, 1838.*

SIR: We have had your reply of yesterday's date to our estimate under consideration. The estimate we believe reasonable, having the comfortable removal of our people solely in view, and endeavoring to be governed, as far as that object will allow, by the rates of expenditure fixed by officers of the Government.

After the necessary bedding, cooking utensils, and other indispensable articles of 20 persons (say four or five families) are placed in a wagon, with subsistence for at least two days, the weight already will be enough to exclude, in our opinion, more than a few persons being hauled. The great distance to be traveled, liability to sickness on the way of grown persons, and the desire of performing the trip in as short a time as possible, induce us still to think our estimate of that item not extravagant.

In relation to the ration at 16 cents, the estimate is fixed at a rate which the Government agents had already made some arrangements to have them supplied.

The addition, however, of sugar and coffee has been made under this estimate, which we trust will be reasonable enough.

In our estimate we omitted an item which we deem indispensable; but propose now the addition of soap, the quantity and cost of delivery at the rate of 3 pounds to every 100 rations, at 15 cents per pound.

Whatever may be necessary in the emigration of our people to their comfort on the way and as conducive to their health we desire to be afforded them; at the same time it is our anxious wish in the management of this business to be free at all time from the imputation of extravagance.

With high respect, we have the honor to be your obedient servants,

JNO. ROSS.
R. TAYLOR.
(And Others.)

Maj. Gen. WINFIELD SCOTT, U. S. A.,
Commanding.

No. 8.

HEADQUARTERS EASTERN DIVISION,
Cherokee Agency, August 2, 1838.

GENTLEMEN: By your note of this date, in reply to my remarks of yesterday on your estimate of the day before, I perceive that after a full consideration you adhere to the calculation of $65,880, with a slight addition for soap, for the comfortable emigration by land of every thousand Cherokees from this to their new country west of the Mississippi.

As the Cherokee people are exclusively interested in the cost as well as the comfort of the removal, I do not feel myself at liberty to withhold my sanction. The estimate, therefore, submitted to me on the 31st ultimo, with the small addition for soap, is hereby approved.

I remain, gentlemen, yours, respectfully,

WINFIELD SCOTT.

Messrs. J. ROSS, R. TAYLOR, E. HICKS, E. GUNTER, J. BROWN, WHITE PATH, and SITUWAKEE, *Cherokee Agents for Emigration.*

TAKATTOKAH, *June 13, 1839.*

Whereas the people of the Cherokee Nation, east, having been captured and ejected from the land of their fathers by the strong arm of the military power of the United States Government and forced to remove west of the River Mississippi; and

Whereas previous to the commencement of the emigration measures were adopted in general council of the whole nation, on the 21st of July and August 1, 1883, wherein the sentiments, rights, and interests of the Cherokee people are fully expressed and asserted; and

Whereas under those proceedings the removal took place, and the late emigrants arrived in this country and settled among those of their brethren (who had previously emigrated), on lands which had been exchanged for with the United States by the Cherokee Nation for lands east of the River Mississippi; and

Whereas the reunion of the people and the adoption of a code of laws for their future government are essential to the peace and welfare of the whole nation, and it being agreed upon that the Eastern and Western Cherokees henceforward be united as a body politic, and shall establish a government west of the River Mississippi, to be designated the Cherokee Nation: Therefore,

Resolved by the committee and council of the Eastern and Western Cherokees in general council assembled, etc.

(Here follows plan for revising laws, etc.)

[House Doc. No. 286, Twenty-fourth Congress, first session.]

MEMORIAL OF THE CHEROKEE REPRESENTATIVES, SUBMITTING THE PROTEST OF THE CHEROKEE NATION AGAINST THE RATIFICATION, EXECUTION, AND ENFORCEMENT OF THE TREATY NEGOTIATED AT NEW ECHOTA IN DECEMBER, 1835.

[June 21, 1836.]

To the honorable the Senate and House of Representatives of the United States of North America in Congress assembled:

The undersigned representatives of the Cherokee Nation east of the River Mississippi, impelled by duty, would respectfully submit for the consideration of your honorable body the following statement of facts:

It will be seen from the numerous subsisting treaties between the Cherokee Nation and the United States that from the earliest existence of this Government the United States in Congress assembled received the Cherokee and their nation into favor and protection, and that the chiefs and warriors, for themselves and all parts of the Cherokee Nation, acknowledged themselves and the said Cherokee Nation to be under the protection of the United States of America, and of no other sovereign whatsoever; they also stipulated that the said Cherokee Nation will not hold any treaty with any foreign power, individual State, or with individuals of any State; that for and in consideration of valuable concessions made by the Cherokee Nation, the United States solemnly guaranteed to said nation all their lands not ceded, and pledged the faith of the Government that "all white people who have intruded, or may hereafter intrude, on the lands reserved for the Cherokees shall be removed by the United States and proceeded against according to the provisions of the act passed March 30, 1802," entitled "An act to regulate trade and intercourse with the Indian tribes and to preserve peace on the frontiers."

It would be useless to recapitulate the numerous provisions for the security and protection of the rights of the Cherokees to be found in the various treaties between their nation and the United States. The Cherokees were happy and prosperous under a scrupulous observance of treaty stipulations by the Government of the United States, and from the fostering hand extended over them they made rapid advances in civilization, morals, and in the arts and sciences. Little did they anticipate that when taught to think and feel as the American citizen, and to have with him a common interest, they were to be despoiled by their guardian, to become strangers and wanderers in the land of their fathers, forced to return to the savage life, and to seek a new home in the wilds of the far West, and that without their consent.

An instrument purporting to be a treaty with the Cherokee people has recently been made public by the President of the United States that will have such an operation if carried into effect. This instrument, the delegation aver before the civilized world, and in the presence of Almighty God, is fraudulent, false upon its face, made by unauthorized individuals, without the sanction and against the wishes of the great body of the Cherokee people. Upward of 15,000 of those people have protested against it, solemnly declaring they will never acquiesce. The delegation would respectfully call the attention of your honorable body to their memorial and protest, with the accompanying documents, submitted to the Senate of the United States, on the subject of the alleged treaty, which are herewith transmitted, etc.

The Cherokee territory within the limits of North Carolina, Georgia, Tennessee, and Alabama, is estimated to contain 10,000,000 acres. It embraces a large portion of the finest lands to be found in any of the States, and a salubrity of climate unsurpassed by any, possessing superior advantages in reference to water power, owing to the numerous rills, brooks, and rivers which flow from and through it. Some of these streams afford good navigation; others are susceptible of being easily improved and made navigable. On the routes where roads have been opened by the Cherokees through this country there must necessarily pass some of the most important public roads and other internal improvements, which at no distant day will be constructed.

The entire country is covered with a dense forest of valuable timber, also abounding in inexhaustible quarries of marble and limestone. Above all, it possesses the most extensive regions of the precious metals known in the United States. The riches of the gold mines are incalculable, some of the lots of 40 acres of land, embracing gold mines, which have been surveyed and disposed of by lottery, under the authority of Georgia (with the incumbrance of the Indian title), have been sold for upward of $30,000.

There are also extensive banks of iron ore interspersed throughout the country. Mineralogists who have traveled over a portion of this territory are fully persuaded, from what they have seen, that lead and silver mines will also be found in the mountain regions. Independent of all these natural advantages and invaluable resources, there are many extensive and valuable improvements made upon the lands by the native Cherokee inhabitants and those adopted as Cherokee citizens by intermarriages.

The Cherokee population has recently been reported by the War Department to be 18,000, according to a census taken by agents appointed by the Government. This people have become civilized and adopted the Christian religion. Their pursuits are pastoral and agricultural, and in some degree, mechanical. Their stocks of cattle, however, have become greatly reduced in numbers within the few past years, owing to the unfortunate policy which has thrown upon this territory a class of white and irresponsible settlers, who, disregarding all laws and treaties, so far as the rights of the Cherokees are concerned, and who have been actuated more from sordid impulses of avarice than by any principle of moral obligation or of justice, have by fraud and force made Cherokee property their own.

The possessions of the Cherokee inhabitants consist of houses which cost generally from $50, $100, to $1,000, and in many instances up to $5,000; some few as high as $6,000, $8,000, and $10,000, with corresponding outbuildings, consisting of kitchens, meat houses, dairies, granaries or corncribs, barns, stables, etc., grist and saw mills. Connected with these are gardens for culinary vegetables; also peach and apple orchards; lots of inclosed ground for horses, black cattle, etc. The farms of the Cherokees contain from 10, 20, 30, 40, 50, 60, to 100, 150, and 200 acres of land under cultivation, and inclosed with good rail fences. Among the most wealthy there are farms of 300 and 400 acres, and in one instance perhaps about 800 acres in cultivation.

Some of the most extensive and valuable farms and possessions have been forcibly wrested from the proprietors by the Georgia guard and agents, and citizens of Georgia put in possession of them, whilst the Cherokee owners have been thrust out to seek shelter in a camp, or under the roof of a log hut in the woods, within the limits of North Carolina, Tennessee, and Alabama. There are many valuable public ferries also owned by the Cherokees; the income of some of them amount to from $500 to $1,000, $1,500, and $2,000 per annum. Several public roads opened at private expense were also kept up by companies under regulations of the national council, and tollgates were erected on them. These regulations have all been prostrated by

State legislation, and the Cherokee proprietors thus deprived of their rights, privileges, and property. Besides all this, there are various important interests and claims which are secured by the provisions of the former subsisting treaties to the the Cherokees, and for which the United States in justice are bound to allow indemnification.

For the surrender, then, of a territory containing about 10,000,000 acres, together with the various interests and claims spoken of, and the amount that will be required to cover these claims, no man without data can form any estimate. The sum of $5,600,000 only is proposed to be paid; the price given for the lands at this rate would not exceed 30 cents per acre. Will Georgia accept the whole amount for that portion within her limits?

The faith of the United States being solemnly pledged to the Cherokee Nation for the guarantee of the quiet and uninterrupted protection of their territorial possessions forever, and it being an unquestionable fact that the Cherokees love their country and that no amount of money could induce them voluntarily to yield their assent to a cession of the same, but, when under all the circumstances of their peculiar situation and unhappy condition, the nation sees the necessity of negotiating a treaty for their security and future welfare, and having appointed a delegation with full powers for that purpose, is it liberal, humane, or just that a fraudulent treaty, containing principles and stipulations altogether objectionable and obnoxious to their own sense of propriety and justice, should be enforced upon them? The basis of the instrument, the sum fixed upon, the commutation of annuities, and the general provisions of the various articles it contains are all objectionable. Justice and equity demands that, in any final treaty for the adjustment of the Cherokee difficulties their rights, interests, and wishes should be consulted, and that the individual rights of the Cherokee citizens in their possessions and claims should be amply secured, and as freemen they should be left at liberty to stay or remove where they please.

Also that the territory to be ceded by the United States to the Cherokee Nation west of the Mississippi should be granted to them by a patent in fee simple, and not clogged with the conditions of the act of 1830, and the national funds of the Cherokees should be placed under the control of their national council.

The delegation must repeat, the instrument entered into at New Echota, purporting to be a treaty, is deceptive to the world and a fraud upon the Cherokee people. If a doubt exists as to the truth of their statement a committee of investigation can learn the facts, and it may also learn that if the Cherokees are removed under that instrument it will be by force. This declaration they make in sincerity, with hearts sickening at the scenes they may be doomed to witness. They have toiled to avert such a calamity; it is now with Congress, and beyond their control. They hope they are mistaken, but it is hope against a sad and almost certain reality.

It would be uncandid to conceal their opinions, and they have no motive for expressing them but a solemn sense of duty. The Cherokees can not resist the power of the United States, and should they be driven from their native land then will they look in melancholy sadness upon the golden chains presented by President Washington to the Cherokee people as emblematical of the brightness and purity of the friendship between the United States and the Cherokee Nation.

JNO. ROSS,
JOHN MARTIN,
JAMES BROWN,
JOSEPH VANN,
JOHN BENGE,
(And Others,)
Representatives of the Cherokee Nation.

WASHINGTON CITY, *June 21, 1836.*

[House Doc. No. 99, Twenty-fifth Congress, second session.]

MEMORIAL OF A DELEGATION OF THE CHEROKEE NATION REMONSTRATING AGAINST THE INSTRUMENT OF WRITING (TREATY) OF DECEMBER, 1835.

[December 15, 1837.]

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The memorial and petition of the undersigned, a delegation appointed by the Cherokee Nation on behalf of themselves and their constituents, respectfully showeth:

That at this session of your honorable bodies, held during the preceding winter, a memorial was prepared to lay before your honorable bodies on behalf of the Cherokee Nation setting forth their grievances. This paper was laid before the Senate, but no opportunity presented itself to submit it to the House of Representatives. To this document the undersigned pray leave to refer as part of this their present petition and to request that it may receive your attention and regard.

Subsequent to the termination of that session of Congress and after the installation of the present Chief Magistrate in the Executive Chair, we addressed to him a memorial, a copy of which is appended, and to the contents of which we implore your earnest attention. The documents referred to in those papers are on the files of your honorable bodies or in the War Department.

Since that period the Cherokee people have again, in full national council, appointed the undersigned as their representatives to lay before the Government of the United States a statement of their condition, and clothed them with full authority to enter into such arrangements as may be concurred in by the United States. These proceedings are herewith submitted.

A special agent of the United States was at that time in our country. A copy of the resolutions of the general council was transmitted to him, and an opportunity was offered that gentleman of seeing for himself what was the position, and ascertaining for himself what were the opinions and sentiments of our people.

That gentleman won for himself our respect and high regard. Doubtless he has communicated to the Executive the result of his observations; and such is the confidence we repose in him that we feel assured his representations accord with the facts.

Although we had not consummated with him any arrangement, yet his conciliatory tone, and the sympathy he expressed toward us, reanimated our hopes; and when, upon our arrival at this place, and having had an interview with the President, we learned that he was to be the organ of communication between us and the War Department, we could not but indulge the expectation that we might yet conclude such an arrangement as would be mutually and equally satisfactory.

This cup of hope has been dashed from our lips. The negotiations with him have been terminated; and the Secretary has, while refusing to treat with us upon any basis that we could suggest, and declining to intimate to us what the Executive would be disposed to grant, intimated to us the fixed and unalterable determination to enforce upon us the stipulations of the fraudulent and invalid instrument purporting to be a treaty negotiated at New Echota in 1835.

Such being the decision of the Executive, we have no alternative but an appeal to your honorable bodies. No denial has been given to our statement of the facts connected with that document; it is not asserted that it was fairly and honestly made; it is not alleged that it was negotiated with persons authorized to represent and to bind our nation; it is not intimated that it ever was authorized or recognized by our people. Indeed, there could be no shadow of ground upon which to question or to controvert our assertions upon these points.

Yet we are told that the Executive has no discretion—has no power to disregard it or to enter into any arrangement inconsistent with its provisions. And this is substantially all the answer we can obtain.

On a former occasion when, under similar circumstances, it was represented to the Government of the United States that an instrument, purporting to be a treaty, had been executed by parties unauthorized by those whom they professed to represent, an inquiry was instituted, the truth of the allegations ascertained, and the Executive promptly redressed the wrong. A new treaty was concluded, the first provision of which was to annul that which had been imposed by fraud upon the President and Senate. It was from looking to that case that we have erred, if we were wrong in supposing that it was the Executive to whom we were to address ourselves.

But we can not and will not yet believe that we are remediless; that because from imperfect knowledge of the circumstances of the case those who signed the instrument of which we complain were supposed to be authorized, and therefore the validity of their acts was presumed; that when the contrary is alleged all inquiry will be refused, and when proved the United States will persevere in demanding at our hands the fulfillment of the stipulations of a void and fraudulent contract.

We can not for a moment suspect that either the disposition or the power is wanting to annul this instrument if it be ascertained to be open to the objections we have urged against it. Knowing as we do that these objections are true to their very letter, we have never relinquished the hope that we should ultimately receive justice.

A charge has been made against some of our number that we have misled our people by inducing them to entertain false hopes. In the most solemn manner, and with a due sense of the responsibility we incur, we assert that the only hopes we ever encouraged were that the United States would never perpetrate injustice and wrong against those over whom they had voluntarily assumed the relationship of guardian and protector; that they would listen to our remonstrances, hear our petition, investigate the facts, and decide in conformity with the immutable principles of equity, justice, and good faith. If these be false hopes we shall admit not only that we have been egregiously deceived ourselves, but have been instrumental in deceiving others.

Independently of our objections to the instrument in question, we have other causes of complaint to lay before your honorable bodies. We complain of the outrages which have been inflicted upon our persons and property—lawless arrests, open acts of violence perpetrated upon both.

We complain of sending among us a large armed force, of the attempts made to prevent the expression of opinion among us, of the arrest and imprisonment of our persons, of the expulsion of our people from their homes; for which even the document in question furnishes no ground or cause. All these, however, sink into insignificance when compared with the one overwhelming calamity, present and prospective, of having the instrument of December, 1835, enforced upon us and our people.

To these prayers we again, in the name of our nation, solicit your attention. Our last and only hope depends upon your honorable bodies. Under our present impressions we feel it due to ourselves frankly to state that the Cherokee people do not and will not recognize the obligation of the instrument of December, 1835.

We reject all its terms, we will receive none of its benefits. If it is to be enforced upon us it will be by your superior strength. We shall offer no resistance, but our voluntary assent never will be yielded. We are aware of the consequences; but while suffering them in all their bitterness, we shall submit our case to an all-wise and just God, in whose providence it is to maintain the cause of suffering innocence and unprotected feebleness.

JOHN ROSS.
R. TAYLOR.
EDWARD GUNTER.
JAMES BROWN.
ELIJAH HICKS.
SAMUEL GUNTER (his x mark).
SITEWAKEE (his x mark).
WHITE PATH (his x mark).

WASHINGTON CITY, *December 15, 1837.*

[House Doc. No. 316, Twenty-fifth Congress, second session.]

MEMORIAL OF THE CHEROKEE DELEGATION, SUBMITTING THE MEMORIAL AND PROTEST OF THE CHEROKEE PEOPLE TO CONGRESS.

[March 12, 1838.]

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The undersigned delegation from the Cherokee Nation most respectfully beg leave to submit the accompanying memorial, bearing 15,665 signatures of the Cherokee people, together with some papers annexed, which have just been dispatched to the delegation by express from their constituents. To these documents the attention of your honorable bodies is respectfully requested; and, as in duty bound, your memorialists will ever pray.

JNO. ROSS.
R. TAYLOR.
EDWARD GUNTER.
ELIJAH HICKS.
JAMES BROWN.
SAMUEL GUNTER (his x mark).
SITEWAKEE (his x mark).
WHITE PATH (his x mark).

WASHINGTON CITY, *March 12, 1838.*

[February 22, 1838.]

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

Most humbly and most respectfully showeth:

That whereas we, the undersigned, citizens of the Cherokee Nation, have always regarded the instrument purporting to be a treaty made in December, 1835, at New Echota, by the Rev. John F. Schermerhorn and certain unauthorized individual

Cherokees, to be a violation of the fundamental principles of justice and an outrage on the primary rules of national intercourse, as well as of the known laws and usages of the Cherokee Nation, and therefore to be destitute of any binding force on us;

And whereas at a general council of the nation held at Red Clay in September, 1836, our sentiments were set forth, and our solemn protest entered against it;

And whereas at a subsequent general council of the nation held at Red Clay in August, 1837, a communication from the President of the United States on the subject of said instrument was delivered in full council by Col. John Mason, special agent of the United States;

And whereas after mature deliberation on the said communication the resolutions of the preceding council in reference to that compact were reaffirmed, together with the memorial which accompanied the same;

And whereas we entertained the belief that through the medium of the special agent's report the President would become correctly informed of the true state of the matter and of the real sentiments of the Cherokee people;

We therefore cherished the confident hope that he would abrogate that fraudulent instrument and at once enter into arrangements with us for the adjustment of all difficulties.

With these views, we then appointed a delegation to represent us before the Government of the United States, and vested them with full powers to make final arrangements of all matters in controversy; and we were animated with the prospect of a speedy termination of our distresses. But the cup of hope is dashed from our lips; our prospects are dark with horror, and our hearts are filled with bitterness. Agonized with these emotions, language fails, our tongues falter as we approach the bar of your august assemblies, before whom we again beg leave humbly to present our grievances.

With the full details of our troubles we forbear to trespass on your indulgence. They are extensively known, and our delegation now at Washington will be found ready to furnish any information which may be needed. We therefore respectfully present the following, which will show the appalling circumstances in which we are placed by the operation of that perfidious compact.

A communication has recently issued from the United States agency, addressed to the chief, headsmen, and people of the Cherokee Nation, in which we are told that "The Executive has formally declined all intercourse or correspondence with Mr. Ross in relation to the treaty," and "that an end has been put to all negotiation upon the subject. * * * That it is the unalterable determination of the President to execute the treaty. * * * The time can not possibly be prolonged. * * * Another day beyond the time named can not and will not be allowed you."

The writers say, "We will not attempt to describe the evils that may fall upon you if you are still obstinate and refuse to conform to the requirements of the treaty; * * * we will not paint the horrors that may ensue in such an event." It will be readily conceived that declarations like these, emanating from such a source, our country already filled with troops, can not fail to fill our minds with consternation aad surprise. What have we done to merit such severe treatment? What is our crime? Have we invaded anyone's rights? Have we violated any article of our numerous treaties? Have we, in any manner, acted in bad faith? We are not even charged with any such thing. But we are accused of "laboring under a dangerous error," and of being "duped and deluded by those in whom we have placed implicit confidence." Your pretended friends, say they, "have proved themselves your worst enemies."

But what is our "dangerous error?" Is it a "dangerous error" to believe that the great nation, whose representatives we now approach, will never knowingly sanction a transaction originated in treachery, and to be executed only by violence and oppression? It can not be. Is it a delusion to assert that the makers of that ill-omened compact were destitute of authority? This fact we are prepared to prove by incontestable evidence. Indeed, it is virtually admitted by the parties themselves. And the very fact that an armed force should be put in requisition to defend their persons and to compel our submission argues, not obscurely, a defect of confidence in the validity of the compact.

Is it obstinacy to refuse our assent to an act which is a flagrant violation of the first principles of free government, and which sets foot on the neck of our liberties and our dearest rights? Are we to be thus frowned into silence for attempting to utter our complaints in the ear of our lawful and covenanted protector? Is it a crime to confide in our chiefs, the men of our choice, whom we have tried and found faithful? We would humbly ask in whom should we confide? Surely not in those who have, in the face of our solemn injunctions, and in opposition to the reiterated expression of our sentiments, conspired the ruin of our country, usurped the powers of the nation, framed the spurious compact, and by artifice and fraud palmed it on the authorities of the United States and procured for it the recognition of those high functionaries.

And now, in the presence of your august assemblies, and in the presence of the Supreme Judge of the Universe, most solemnly and most humbly do we ask, Are we, for these causes, to be subjected to the indiscribable evils which are designed to be inflicted on us? Is our country to be made the scene of the horrors which the commissioners will not paint?

For adhering to the principles on which your great empire is founded, and which have advanced it to its present elevation and glory, are we to be despoiled of all we hold dear on earth? Are we to be hunted through the mountains like wild beasts, and our women, our children, our aged, our sick to be dragged from their homes like culprits and packed on board loathsome boats for transportation to a sickly clime?

Already are we thronged with armed men. Forts, camps, and military posts of every grade already occupy our whole country. With us it is a season of alarm and apprehension. We acknowledge the power of the United States; we acknowledge our own feebleness. Our only fortress is the justice of our cause. Our only appeal on earth is to your tribunal. To you, then, we look. Before your honorable bodies, in view of the appalling circumstances with which we are surrounded, relying on the righteousness of our cause and the justice and magnanimity of the tribunal to which we appeal, we do solemnly and earnestly protest against that spurious instrument.

And we do hereby also respectfully reaffirm, as a part of this our memorial, the resolutions and accompanying memorials of the last two general councils of the nation held at Red Clay. Our minds remain unaltered. We never can assent to that compact, nor can we believe that the United States are bound in honor or in justice to execute on us its degrading and ruinous provisions.

It is true we are a feeble people, and as regards physical power, we are in the hands of the United States; but we have not forfeited our rights, and if we fail to transmit to our sons the freedom we have derived from our fathers it must not be by an act of suicide; it must not be with our own consent.

With trembling solicitude and anxiety, we most humbly and most respectfully ask will you hear us? Will you extend to us your powerful protection? Will you shield us from the "horrors" of the threatened storm? Will you sustain the hopes we have rested on the public faith, the honor, the justice of your mighty empire? We commit our cause to your favor and protection. And your memorialists, as in duty bound, will ever pray.

Signed by 15,665 of the Cherokee people, as will appear by referring to the original, submitted to the Senate by the Cherokee delegation.

CHEROKEE NATION, *February 22, 1838.*

MEMORIAL OF THE DELEGATION OF THE CHEROKEE NATION.

[March 9, 1840.]

To the honorable the Senate and House of Representatives of the United States of America in Congress assembled:

"The petition and memorial of the undersigned, delegates and representatives of the Cherokee Nation, respectfully shows and represents:

"That the present position of the Cherokee Nation, and the events which have taken place since its cause was humbly submitted two years ago to Congress, are of a character to call for deep and immediate attention.

"Your memorialists have no desire, at this juncture, to dwell on the harrowing causes of the removal of the great mass of their people from their native and cultivated country east of the Mississippi to the wilderness of the West. The history of that capture is notorious; and that its agonies were mitigated, is owing to the considerateness of the stronger in not demanding of an entire people to say that they acknowledged what it was known they had disavowed, and to the permission humanely accorded to their leading men, of personally supervising the compelled removal.

"Your memorialists would here respectfully observe, that, when it was found indispensable, under all the circumstances, to change the mode at first contemplated for effecting the transit in question, those of your memorialists who were intrusted with the charge of reconciling their countrymen to it, and of conducting them to their destination, encountered difficulties in the task, of which it may be impossible for your honorable bodies to form any imagination. Many were the stern minds they had to alter, who, even when convinced of the hopelessness of retaining the inheritance they held so sacred, could only be persuaded not to die defending it, by a very slowly inspired reliance on promises that their consenting to remove would ensure peace and freedom to their children in a new and permanent home.

"For the success of those of your memorialists and others of their fellow-citizens who performed this difficult office it was fortunate that they were encouraged to assure their indignant, reluctant, and incredulous countrymen, that they would at length live unmolested in a region where their inspiriting national principle of self-government by the power of the majority was no more to be rendered inoperative; where they were to enjoy their own laws, and to be forever secured in the glorious privilege of feeling that they were men.

"The Cherokee Nation was removed; though, on their first capture by troops of the American Republic, estates, large and small, were, upon the instant, seized and sold to any sordid adventurer, at large commissions to the auctioneers and next to nothing for the owners; though, in the sudden and forced gathering of the people into separate masses by those troops, children were abruptly severed from doting parents who never met them more; though even the young husband was doomed to know that his wife, whom he was not permitted to protect nor even to behold, had to pause before the rough soldier on the road to a military camp, and, under these maddening circumstances, hear the first cry of her infant; though vast multitudes of both sexes and of all ages, ever until then habituated to domestic comforts, were sickened by the wretchedness and unwholesomeness of being congregated into open fields and crowded under tents during the most scorching heat of summer, and thousands of those nearest and dearest to many of us at length sunk into miserable graves; yes, though all these aggravations clustered around us on every side, still the drooping Cherokees were cheered on finding their armed captors eventually withdrawn and their conduct into exile transferred to persons among themselves in whom they could confide."

The memorial recites the removal, the unavoidable conflict with the Western Cherokees, the difficulties of arranging a union, their final success, the calumnies filed against John Ross on account of the murders of the Ridges and Boudinot, and concludes by maintaining their position that the treaty 1835 was void, and that it was necessary to adjust their relations independently of that treaty, using the following language:

"Your memoralists, therefore, humbly state that, having full powers from the Cherokee people to bring all questions between them and the United States to a close, they have been waiting for some time in Washington, for the purpose—

"First. Of obtaining indemnification for the country which has been taken away from them east of the Mississippi, and for the loss of private property and for injuries sustained in their forced removal.

"Second. Of establishing a satisfactory definition of the tenure under which they are to hold their lands in the West.

"Third. Of procuring some specific stipulations of the relations which are to exist between them and the United States. And,

"Fourth. Of bringing the balance yet due for the expenses of their recent emigration under General Scott to an immediate settlement.

"And your memorialists throw themselves on the humanity and justice of your honorable bodies, as the only resource now left for the arrangement of these momentous affairs, to open the door for their relief by such action as the wisdom of your honorable bodies may devise, and the circumstances of our case urgently demand.

"And your memorialists will ever pray.

JOHN ROSS.
JOHN LOONEY.
(And Others.)

"WASHINGTON CITY, *February 28, 1840.*"

REMOVAL OF THE CHEROKEES, ETC.

[House Report No. 288, Twenty-seventh Congress, third session, Vol. IV.]

[March 2, 1843.]

Mr. Cooper, of Pennsylvania, from the Committee on Indian Affairs, submitted the following report:

On the 9th of July, 1842, the House of Representatives adopted a resolution in the following words:

"*Resolved,* That the Committee on Indian Affairs be, and hereby are, instructed to inquire into the contract for the removal of the Cherokee Indians to the west of the

Mississippi River; the amount contracted for the removal; the amount actually paid; how and by what officer the account of the contractor was settled and allowed; whether there was any appeal from such settlement, and the decision on the appeal, and whether the appeal was final or not; by what officer and by what authority the account was reopened and finally settled and allowed, and out of what fund such account was paid, and on what authority; also to inquire whether any and what other offers had been made for their removal, and why not accepted; and whether any further and what further action of Congress should be had for the protection of the Cherokees, or to guard the public Treasury; and that the said committee have power to send for persons and papers."

The Committee on Indian Affairs, in pursuance of the above resolution, report:

That the inquiries directed by the same are hereinafter stated and answered in order:

First. What was the amount contracted to be paid per head for the removal of the Cherokees to the west of the Mississippi?

By a contract made on the 2d of August, 1838, by General Scott, as agent of the United States, with John Ross, Elijah Hicks, and others, on the part of the Cherokees, the sum of $65.88 was stipulated to be paid per head for the removal of the Cherokees to the country assigned them beyond the Mississippi. (See p. 12.) This price General Scott regarded as extravagant.

R. E. Clements, who was examined as a witness on this subject, states that "he considers the price paid to John Ross, agreeably to his contract, as having been exceedingly extravagant." He says further, that "there were persons on the ground every way able and competent to carry out the contract who would have taken it for less than one-half the amount agreed to be paid to John Ross." (See deposition, p. 41 of this report.) Gary Hinant, another witness, states that he was a citizen of the Cherokee Nation, and removed himself; that he was fifty-five days on the route; that he moved at his ease, stopping when necessary for rest and refreshment, and that his expenses after starting were less than $20 per head. The distance was about 800 miles. (Deposition, p. 45.)

The treaty party offered to remove themselves for $40 per head, and Watson & Co. offered to do it at $32 per head. The Secretary of War estimated the cost of removal at $30 per head. (See report Commissioner of Indian Affairs, p. 12, et seq.)

Second. What amount was actually paid per head for the removal of the Cherokees?

The amount actually paid was $103.25 per head. The amount contracted to be paid, as before stated, was $65.88, or, with a small allowance which was made for soap, $66.24. The whole amount due Ross, estimating at $66.24 per head, was $776,398.98, which was paid to him by Captain Page, the disbursing agent of the Government, on the 13th November, 1838. The whole claim of Mr. Ross was $1,263,338.38, or at the rate of $103.25 per head.

Third. How was this claim settled, and by what officer was it allowed?

The claim presented by John Ross to the Commissioner of Indian Affairs, as before stated, amounted to $1,263,338.38. Of this claim $776,398.98 had been paid, and was allowed; the remainder, amounting to $486,939.50, was rejected. This amount is over and above the contract, and is claimed on the ground that what is termed the contract was a mere estimate, and the amount mentioned in the same liable to be increased or diminished accordingly as a greater or less time should be occupied in the removal. (See report Commissioner Indian Affairs, p. 12, et seq.)

Fourth. Was there an appeal from the decision of the Commissioner of Indian Affairs; to what officer, and what was the decision on the appeal?

When the amount of $486,939.38 was rejected by the Commissioner of Indian Affairs an appeal was taken by John Ross to the Secretary of War, who affirmed or approved the decision of the Commissioner. The case was then brought before the President, and the decision of the War Department affirmed. Afterwards, on the 7th of January, 1841, this matter was again brought before the President (Van Buren) by the counsel of John Ross, with a request that he would review his former decision; but this he declined, stating that he regarded his former decision as final. (Pp. 25, 26.)

Fifth. Was the settlement of this claim opened; by what authority was it opened, and how was it finally disposed of?

The decision of the Commsssioner of this claim, made on the 8th of August, 1840, and affirmed by the President of the United States on the 2d of September, 1840, was opened, by the direction of the present Chief Magistrate, some time in the spring of 1841, as appears from his letter of September 20, 1841, to John Ross and others, in which he informs them "that he had directed the Secretary of War to examine and settle the arrearages due for removal under the contract made with General Scott, in 1838." The claim for arrearages was accordingly reexamined, and $486,939.50 was finally ordered to be paid by the Secretary of War on the 6th of September, 1841. (See pp. 49, 50; see also report of Secretary of War, in which he says: "The ground on which the claim rests is materially changed by the statement of General Scott, made since the first decision, p. 28.)

The action of the executive officers in this case was, as the committee believe, in contravention of the rules heretofore observed, and repugnant to law, as expounded by various law officers of the Government in like cases. It is a rule, which each Administration has heretofore prescribed for its action, to consider the acts of its predecessors conclusive, as far as the Executive is concerned. And, without intending to cast censure or blame upon the Executive in this particular case, or to do more than simply arrange and embody the facts, the committee nevertheless feel bound to observe that under such precedent the Executive acts will always be liable to be disturbed as often as a successor shall think proper to review them. (See opinion of Mr. Attorney-General Wirt, Executive Document, second session Twenty-sixth Congress, vol. 2, 1840–41, p. 554; see also same volume, p. 841, opinion of Mr. Attorney-General Taney.)

Sixth. Out of what fund was the amount last allowed paid; to whom was it paid, and on what authority?

The sum of $486,939.38 was paid out of the fund arising under the Cherokee treaty of 1835–36. It was paid to John Ross on the authority, as the committee believe, of the following resolution of the Cherokee council, to wit:

"*Resolved by the Cherokee nation, through their National committee and council in national council assembled,* That it is hereby ordered that the aforesaid John Ross be, and he is hereby, directed and fully empowered to proceed to Washington City and urge a settlement of this claim with all possible expedition, and to apply for and receive from the Government of the United States, in the name of the Cherokee Nation, the balance due of $581,346.88½ as stated in the account of the emigration claim, in order that the business growing out of it may be brought to a final close."

This sum of $581,346.88½ includes a claim of Lewis Ross of $94,407.38, which has not been referred, not having relation to the subject of inquiry. It is, however, somewhat curious that the national council should undertake the settlement of a private claim. (For the fund out of which this claim was paid, see Statement A, p. 51.)

Seventh. Was any offer or bid made for the removal of the Cherokees and at what rate?

General Scott states in a letter to the Secretary of War, dated August 28, 1838, that the treaty party of the Cherokee Nation offered to remove themselves for $40 per head. Watson & Co. proposed to remove them at $32 per head, and R. E. Clements, a witness already referred to, states that there were persons on the ground who would have removed them for less than half the sum agreed to be paid to John Ross.

From the opinion entertained of the original contract (at $65.88 a head) by various persons, some idea may be formed of whether it was liberal or not. Bryan, Clements & Co. offered Lewis Ross $40,000 for his contract, which he declined. George D. Gordon, who was a partner of Lewis Ross to the extent of one-seventh, sold his interest to the latter for $15,000. If the profits on a seventh were $15,000 they would amount to $105,000 on the whole. John McCain, who was employed by Lewis Ross to assist him in the execution of his contract, and who kept the accounts of the purchases, etc., states that Ross could not have realized less than $150,000 on his contract as originally made. (See report of Commissioner of Indian Affairs, p. 12, et seq.)

Eighth. What action should be taken for the protection of the Cherokees, and to guard the Treasury?

This is a question which the committee find it difficult to answer. They submit (see Statement A) a table showing the amount appropriated, the objects to which it has been applied, as well as the amount remaining unexpended. From this the House will be able to form its own judgment, when it shall be called on to act on the subject.

Under the treaty and the acts passed to carry it into effect the Cherokees were entitled to $6,537,634. By the treaty $600,000 was set apart to pay the expenses of removal, but by the table above referred to it will be seen that the expense of removal and subsistence for a year exceeds the sum of $2,855,000. The amount paid to claimants for spoliations, reservations, and improvements is $2,217,328.90, and the whole amount expended is $5,388,178.23. The sum of $714,871.75 is invested in stocks for the benefit of the Cherokees, and there remains in the Treasury and in the bonds of agents, $434,384.02. Of this last-mentioned sum $63,663.29 has been lost by the defalcation of Capt. R. D. C. Collins, as well as several smaller sums by other persons; so that there remains in the Treasury but $275,499.59. The payment to John Ross of the sums which he has received over and above the amount agreed to be paid him will probably be regarded as a matter of no pecuniary importance to the United States.

These sums were paid out of the fund arising under the treaty, or that which was appropriated by the act of 12th June, 1838. But it must be recollected that a portion of the funds arising under the treaty were applicable to certain specific objects; and if the Government has misapplied these funds so far that there does not remain sufficient to meet these objects, the deficiency created by its abuse of its trust must be made good out of the Treasury. The payment to John Ross was an injury to that part of the nation who did not participate in the profits of his contract, and it is likely to prove an injury to this Government in the manner just mentioned.

Accompanying this report will be found the contract of General Scott with John Ross and others; the report of the Commissioner of Indian Affairs on the subject of Mr. Ross's claim; the review of the claim by Mr. Secretary Bell; the letter of the President to the Cherokee delegation; Mr. Ross's accounts; the testimony of a number of witnesses relative to the subject; together with a statement of the expenditures made from the Cherokee fund arising under the treaty of 1835-36, etc.

JOHN HOWARD PAYNE'S EVIDENCE.

John Howard Payne testified before the Committee on Indian Affairs in 1842 that he was employed by John Ross from 1835 to 1841 for the purpose of assisting him and the Cherokee delegation, sometimes, with him, to compose the difficulties between the Cherokees and the United States. His evidence is, in part, as follows (House Report, No. 1098, Twenty-seventh Congress, second session; House Reports of Committees, vol. 5, 1841-42):

"Second interrogatory. Was Mr. Ross opposed to the execution of the treaty made with the Cherokees in 1835-36? If aye, state in what manner his opposition was manifested. State particularly.

"Answer to second interrogatory. Mr. Ross never, to my knowledge, admitted, either directly or indirectly, that what the interrogatory terms 'the treaty made with the Cherokees in 1835-36,' either was fairly entitled to be considered as a real treaty, or was made with the Cherokees as a nation. * * *

"Third interrogatory. Has Mr. Ross ever informed you that he would never recognize the validity of the above-mentioned treaty? * * *

"Answer. * * * I have always supposed that Mr. Ross never would recognize the validity of what the interrogatory terms 'the treaty made with the Cherokees in 1835-36.' I can not state fully all that he said upon the subject, * * * but from the beginning to the end of my communications with him his views of it never appeared to vary.

"Fourth interrogatory. Were you present in Washington in 1839, when Mr. Ross presented his claim to the Department of War for the removal of the Cherokees? If aye, state whether the claim was against the United States or the Cherokee Nation.

"Answer. * * * I never understood that it was made against the Cherokee Nation, but always regarded it as a claim against the United States. Distinctly it seems to be stated as such in the memorial upon the general affairs of the Cherokees and the United States, which appears in Document 129 of the House of Representatives, first session Twenty-sixth Congress, where, on the 10th page, it forms the fourth and last article of the enumeration of objects sought by the delegation signing that memorial. Such also is my construction of the manner in which it was mentioned by John Ross in a message to the Cherokee council in October, 1840, in resolutions, and an order of the same council to John Ross for its enforcement, as well as in other official documents.

The language used by Mr. Ross in his message to the national council in the present Cherokee Nation, in October, 1840, is as follows (id., page 45):

JOHN ROSS'S MESSAGE, OCTOBER, 1840.

"* * * I abstain from remarking upon the postponement of the just dues to our nation, further than to add that the unanimity now prevailing among ourselves, and other circumstances, justify the expectation of a change of policy in the United States Government regarding our affairs. I will, therefore, hope that our countrymen will continue to be patient, and to place every confidence in the honesty and honor of the Government and people of the United States. Let us not afford an excuse for withholding our dues, by dissension among ourselves. Let us remain in the right, and trust to Providence and an upright cause for the result. The points for adjustment at Washington are more numerous and important now than ever. The country taken from us east of the Mississippi still remains unpaid for; the tenure under which our present lands in the West are granted continues undefined, as do the relations which are to subsist between us and the United States. But these multifarious calls are too severely known to you to require that I should enumerate them here.

"The utter disregard of all our claims at the American metropolis might have been more injurious than it proved had it not been for the timely aid of friends by whom your delegation were enabled to meet the expenses which were to have been defrayed with moneys long overdue from the United States that when applied for under your requisition were withheld. Thus embarrassed, I claimed, under a protest, the proceeds of a partial valuation for improvements taken from me in our late country, and with these discharged the loan for the nation and paid all other demands against your delegates."

And on page 46, id:

"It was my hope to have had it in my power to close the whole business of the emigration at the present council, but I deeply lament that the course taken by the War Department in withholding a final settlement renders it impracticable. When our account, formed upon the basis distinctly understood between General Scott and our special agents, was presented for payment frivolous exceptions were taken against portions of it, and a balance due to the nation of $581,346.88½ was left unsettled; * * * The principle upon which the nation estimated our emigration expenses with General Scott was to receive for them the same amount which the removal would have cost had it been accomplished not by us but by the United States." * * *

The resolution of the national council empowering John Ross to receive from the United States the balance due for removal under the contract with General Scott, passed November, 1840 (id., 48), is as follows:

RESOLUTION OF CHEROKEE NATIONAL COUNCIL, NOVEMBER 11, 1840.

"Whereas, in the month of May, 1838, the Cherokee Nation east of the Mississippi was in a state of capture by an army of the United States, under the command of Major-General Scott, for the avowed purpose of removal west of the Mississippi;

"And whereas, at that crisis, it was thought expedient by the United States, in order to diminish the sources of irritation produced among the Cherokees by the hereinbefore stated and other causes, regarded by them as harsh and unauthorized, to change the mode of removal, with an understanding on the part of the Cherokees that their remaining concernments should be left for subsequent adjustment;

"And whereas, in consequence of the aforesaid change of policy, General Scott was vested with unlimited powers from the United States Executive to arrange with the Cherokees for their self-removal and for the withdrawal of his army;

"And whereas, pursuant to the authority in question, General Scott did arrange with the Cherokee Nation, through their regularly constituted special agents for that purpose, and which special agents calculated with General Scott a basis for the amount to be paid for the expense, rating the component parts from the customary allowance by the War Department upon such items, when contracted for with citizens of the United States;

"And whereas it was supposed that the emigration might be entirely completed in eighty days, more or less, although it was impossible to covenant for any specific term;

"And whereas it appeared that, if eighty days should be the time consummated in the emigration, the aggregate of the component parts of the aforesaid estimate would make the cost of each person for the eighty days amount to sixty-five dollars and eighty-eight cents; and hence, on that sum it was concluded to fix as the basis of the charge, to which it was agreed to add the single article of soap, at fifteen cents per pound;

"And whereas it was fully understood between the Cherokee Nation, through their special agents, and General Scott, fully empowered to represent in this matter the United States, that sixty-five dollars and eighty-eight cents, with the aforesaid addition for soap, was a fair allowance for eighty days' expenses each in emigrating the Cherokees; that amount per head being necessarily liable to reduction or to increase, at the same rate, in the event of a greater or a lesser length of time proving requisite for the purpose than the before-mentioned eighty days;

"And whereas, under the aforesaid arrangement, the Cherokee people were formed into thirteen detachments, and the removal was to proceed by such routes as might appear most eligible; but its commencement by no means to be delayed beyond the first day of September, one thousand eight hundred and thirty-eight, then next ensuing;

"And whereas, these conditions being fully settled, the special agents of the nation, acting on the nation's behalf, after having made divers appointments for the purpose of carrying it into effect, in order to condense the business, did delegate its entire superintendance to one of their body, John Ross; and by John Ross such persons were deputed for the management of the various departments, on account of the nation, as were considered best qualified for the purpose;

"And whereas, before the first day of September, one thousand eight hundred and thirty-eight, which day formed the limit of the term covenanted for, John Ross caused the removal to be commenced and the first detachment actually to be under way upon the twenty-eighth of August previous; but in consequence of the awful sickness among the people, and the drought which pervaded the country through which they had to pass, General Scott, and not John Ross, called a halt, and ordered the emigration to be suspended;

"And whereas the emigration, in consequence of this considerateness on the part of General Scott, actually was suspended for several weeks, and thereby a necessity entailed for further delay, and especially among some of the detachments, on arriving at the Mississippi, found it impassable, from the ice accumulated therein, in consequence of the advance of winter;

"And whereas the different causes of protraction extended the time occupied in removal variously, but in every instance beyond the limit first contemplated of eighty days, and consequently *enlarged proportionately the cost of the emigration to the United States;*

"And whereas it appears from the report of John Ross, the superintendent, that there is a balance still in arrear to the Cherokee Nation of five hundred and eighty-one thousand three hundred and forty-six dollars and eighty-eight and a half cents, which balance has been repeatedly applied for, but the payment of which has been withheld;

"Now, therefore, by the committee and council of the Cherokee Nation, in national council assembled, it is

"*Resolved*, That the conditions of the contract made between General Scott, on the part of the United States, and the special agents, including John Ross, on the behalf of the Cherokee Nation, for removing the Cherokees east of the Mississippi to their destination west of Arkansas, have (not) been scrupulously fulfilled on the part of the United States, as represented by General Scott.

"*Resolved*, That the aforesaid failure of the United States to sustain the pledges given to the Cherokee Nation by General Scott has caused the deepest distress among numbers of its citizens who have claims upon the balance due; and that a final settlement, especially under the trying circumstances of the Cherokee people of late, is of vital importance.

"*Resolved*, That the authority vested in the special agents, and continued by the act of union between the Eastern and Western Cherokees, passed at Illinois Camp Ground on the 12th day of July, 1839, and by them conferred upon one of their members, John Ross, as superintendent, with a view to facilitate the duties required of them, be, and the same is hereby, approved and ratified.

And further resolved (*in support of the aforesaid authority*), That, by the Cherokee Nation, through their national committee and council, in national council assembled, it is hereby ordered, that the aforesaid John Ross be, and he is hereby, directed and fully empowered to proceed to Washington City, and to urge a settlement of this claim with all possible expedition, and to apply for and receive from the Government of the United States, in the name of the Cherokee Nation, the balance due of five hundred and eighty-one thousand three hundred and forty-six dollars and eighty-eight and a half cents, as stated in the emigration claim, in order that the business growing out of it may be brought to a final close."

"Eleventh interrogatory. Against whom was Mr. Ross's claim first charged, and against whom was it charged in the second instance? * * *

Answer. * * * I know nothing whatever in relation to any shifting of the emigration claim from the United States to the treaty fund. As John Ross had never, to my knowledge, recognized the treaty, I could not of course suppose that he had recognized any treaty fund, as I had never found him to waver upon that point." (Id. p. 50.)

EVIDENCE ON JOHN ROSS'S CONTRACT.

Samuel C. Stambaugh testified before the same Committee on Indian Affairs August 6, 1842, and said in part:

"I never saw the decision of the Secretary of War upon that claim, or heard the grounds upon which he directed it to be paid out of the Cherokee fund. My impression always was, pending the prosecution of the claim, that it was against the United States and not the Cherokee Nation. It was based upon a contract made between the United States and individuals of the nation, not sanctioned by any provision of the treaty." (Id., p. 51.)

(Page 53.) "In reply to your second interrogatory I can say that I have no distinct recollection of any particular conversation I ever had with Mr. Ross upon the subject of the claim preferred by him against the United States for removing the Cherokees. I have frequently heard him speak of his difficulties with the War Department under Mr. Van Buren's Administration, and always understood that he refused to recognize the New Echota treaty of 1835, and, consequently, that he did not claim under that treaty; hence he must have charged his account for removing the Cherokees to the United States, and not to the Cherokee Nation, in the first instance."

Gideon F. Morris (p. 65):

"Question 10. Had you any conversation with John Ross while in this city in 1841, or since, in relation to the claim which he was then pressing? If yea, state against whom the claim was made, for what it was made, and the particulars of the conversation referred to.

"Answer. I have had different conversations with John Ross relative to the claim which was allowed him in 1841. I understood that the claim was one against the United States, and for services rendered in removing the Cherokees west of the Mississippi.

"Question 11. Did he (Ross) state that the claim was one against the United States and that he did not intend it to be a charge upon the Cherokee fund?

"Answer. I have heard John Ross say that his claim was against the United States and that it was not to come out of the Cherokee fund. I have heard others of the delegation (Mr. Benge and Mr. Vann) say the same thing—that Ross claimed it from the United States and not out of the Cherokee fund.

"Question 12. Did not Ross and his party always deny the validity of the treaty of 1835, and have they not refused to recognize it, and do they do so still?

"Answer. Mr. Ross and his party have in all their conversations with me uniformly denied the validity of the treaty of 1835 and refused to recognize it.

"Question 13. Out of what fund was this claim finally paid? Was it out of the Cherokee fund, and why?

"Answer. I have always understood that the claim was paid out of the Cherokee fund."

Garry Hinant (pp. 66-67):

"Question 3. Have you ever had any conversation with John Ross about his claim? If aye, state out of what fund he claimed to be paid and what he said on the subject.

"Answer. I have had conversations with the Cherokee delegation, and perhaps with Ross, on the subject of their or his claim, who said it was a claim against the United States generally, and not payable out of the Cherokee fund appropriated under the treaty of 1835 and 1836. He and they denied the validity of the New Echota treaty; said it was a fraudulent treaty, made without authority; never could recognize it as a treaty or receive any of the moneys appropriated to carry it into effect."

[House Report No. 1098, p. 68; report from Second Auditor's Office, August 18, 1842.]

1838.		
Aug. 4.	Paid to John Ross, principal chief and agent of the Cherokee Nation, on account of removal and subsistence	$130,000.00
Sept. 17.	....do	134,960.00
Oct. 16.	....do	264,960.00
Nov. 13.	....do	264,479.04
	Total	776,399.04
1841.		
Aug. 16.	Paid to John Ross and Lewis Ross, on account of carrying into effect treaty with Cherokees, allowed by Secretary of War	94,407.38
Sept. 17.	Paid to John Ross, principal chief and agent of the Cherokee Nation, specially authorized by the national council to apply for and receive the same, allowed by the Secretary of War	486,939.50
	Total	581,346.88
	Grand total	1,357,745.92

SERVICES OF TREATY PARTY.

June 2, 1846. In House Report No. 683, Twenty-ninth Congress, first session, Mr. Jacob Thompson, from the Committee on Indian Affairs, reports in favor of House bill 456, providing for separation of the Cherokee country between the factions and the removal and subsistence of the North Carolina Cherokees. The committee say, among other things:

"Before the treaty of 1835 the Cherokee council had issued a decree that any individual of that tribe who should sign a treaty for the cession of the Cherokee country should be considered as a traitor, and as such should be regarded as an outlaw. Notwithstanding this sentence and fearful penalty, after the Cherokee Nation was involved in the most perplexing difficulties with the State of Georgia, which, if persisted in, were calculated to disturb the peace and good feeling of the people of the whole Union; and after it became evident that to remain longer in their old country was destructive to their prosperity, and even of their national existence, and that the only means of saving their own people, and of removing from the States and the General Government the perplexing question of conflicting jurisdictions which had sprung out of their remaining on this side of the Mississippi River, was to treat for the cession of all their country within the States; the treaty party, with a firmness of nerve and a purity of purpose which reflected upon them high honor, came forward, at the most earnest solicitation of the United States, entered into a treaty in the year 1835, in the face of the most violent opposition; braved the most unmeasured denunciations; and, in this manner, enabled our Government to avoid a conflict which threatened to shake our institutions to their very foundation."

GOVERNMENT PARTY.

[July 17, 1846. Indian Office Files.]

[Portion of argument.]

The whole amount paid to the Cherokee government for the expenses of emigration is $1,263,338.48¼.

It is said that this sum is extravagant. If it were so, is the Government relieved from the obligation to pay it? With equal justice might it be said that the sum of $5,000,000 was an extravagant price for the lands east, and therefore it should not be paid.

But is it true in point of fact? What is the standard by which these expenses are to be estimated? Not surely the allowance which was made to individual Cherokees who might remove themselves. But the sum which such removal would have cost if it had been made by the Government of the United States through its agents. It need not be stated that a small party could have been removed at a less expense, proportionately, than a large one.

In cases of sickness and the attentions for burial the whole detachment must be detained, for they could not be separated. The only rule by which it could be estimated is the probable cost to the United States removing the Indians by its own agents. One of the detachments was removed by an officer of the Army of the United States—Lieutenant Dean—and the cost of removal was $61.70 each, within $5 of the sum agreed to be paid by the contract with General Scott, and which was all that it would have cost if the march had only occupied eighty days, as was reasonably estimated, but it required much more, from causes which I will now state.

The commencement of the march was delayed from the causes above stated until it could not be finished until the approach of winter, when the Mississippi River was frozen over and it was impossible to cross it. The detachments were delayed at that river more than a month; the days were short and cold, and a very short distance could therefore be accomplished over bad roads in the day, and hence the greater time occupied and the increased cost.

The great mortality on the route sufficiently proves that no excessive regard was paid to the comfort of the Cherokees, and this is the whole story of this emigration contract fairly and truly stated.

The Cherokees only ask the fulfillment of their contract, and the only reply that was ever made to them, whenever it was refused, was not to deny the contract, but to say that it was too good an one. Does it become the Government of the United States, after driving this poor and oppressed people from their homes, and at infinite sacrifices to them and loss of property, to higgle about a small sum, more or less, appropriated and contracted for, to add to their comfort and to mitigate the severity of the infliction upon them; still more to say we did so contract, but by care and economy you have saved $150,000, and therefore will pay you nothing. We could have contracted with others to have removed you for less. It is true that those with whom we should have contracted had no sympathies with you, and would have driven you as they would beeves to the shambles, or as they did the Creeks, whose unburied bodies were left rotting on the roadside.

I have already adverted to the letter of Mr. Poinsett, Secretary of War, written by the direction of the President, and dated May 18, 1838, in which he says: "I think that the expenses of your removal should be borne by the United States;" and on May 23, 1838, five days afterwards, he writes to General Scott to make an agreement with the headmen of the nation, which, "while it will secure their comfortable removal in the manner most agreeable to their chiefs and headmen, will effectually protect the interests of the United States and prevent all unnecessary delay—useless expenditures."

The language used is not "which will protect the Cherokee funds," but which "will protect the interests of the United States from unnecessary expenditures."

This language shows too plainly to admit of doubt what was the opinion of the Secretary of War. If anything more were required it is furnished by the letter of the Secretary five days before, in which he says he thinks the expense ought to be borne by the United States.

It is true that General Scott, after the contract was made, said that the expense was to come out of the Cherokee funds, but the Cherokee contracting parties never assented to this. But what did General Scott mean by Cherokee funds; the price of the lands, $5,000,000? By no means but the $1,047,000; and the $600,000, doubtless supposing that they would be all sufficient and that the balance left would belong to the Nation. If these two funds had been sufficient they would have been charged with these expenses of removal. They were not, and the United States are bound in good faith to make them sufficient and not to take the treaty money to pay them. As well might the annuity fund or any other be seized on for that purpose. The United States were bound to pay the expense of removal—

1. Because the treaty of 1835 so stipulated.
2. Because the removal of all other Indian tribes, and the previous removal of portions of the Cherokees to the West, were made at the expense of the United States.
3. Because General Jackson, in a talk when the treaty of 1835 was submitted to the Cherokees, assured them that the cost of their removal would be paid by the United States.
4. Because the Secretay of War, under direction of the President, gave similar assurance in May, 1838.
5. Because the Senate so decided when the question was submitted to that body to declare the intention of its award.
6. Because the Congress of the United States so decided afterwards, in 1838, when asked for an additional appropriation to pay the expenses of removal.
7. Because it is only justice, not liberal but hard justice, and without it nothing will be left to distribute per capita, and the Eastern Cherokees will receive nothing for their lands and a most inadequate compensation for the sacrifices consequent upon their removal.

If the treaty fund is relieved from the charges for removal, spoliation claims, reservations, subsistence for one year paid to Glasgow and Harrison, it will then only be charged with—

800,000 acres land	$500,000
Funds invested	500,000
Improvements, ferries, etc., about	1,000,000
	2,000,000

leaving a balance of between $2,500,000 and $3,000,000 justly due as the balance of the purchase money agreed to be paid for the lands east of the Mississippi. If this sum is due now it was equally due on the ratification of the treaty. If the transaction were between individuals interest would be allowed. The Government of the United States has had the benefit of this money for eleven years, and the Cherokees have been deprived of it—not from any laches of theirs, for they have constantly and importunately asked for payment, and the debts of the Indians contracted on the faith of this fund have in that time doubled by the accumulation of interest, etc.

Filed July 17, 1846.

(For Treaty Party Argument, see 1, 2, 3, 4, and 5 in report of Committee on Indian Affairs, Senate Doc. No. 298, Twenty-ninth Congress, first session; House Doc. No. 185, Twenty-ninth Congress, first session.

POWERS OF THE ATTORNEY-GENERAL.

The Attorney-General has no power to give opinions concerning any matters pending in Congress upon request of either of the Houses or of any committee.

On January 20, 1869, Hon. Wm. M. Evarts, Attorney-General of the United States, confirmed the uniform opinion of the Attorneys-General of the United States as set forth by Attorneys-General Wirt, Taney, Crittenden, and Bates (1 Op., 335; 2 ib., 499; 5 ib., 561; 10 ib., 164), "that it was not competent for the Attorney-General to give opinions concerning any matters pending in Congress upon the request of either of the Houses or of any committee," for the reasons set forth in those opinions. (12 Op. Atty. Gen., 544.) Attorney-General Wirt (1 Op., 320) says, September 14, 1821, in regard to the act of Congress which prescribes the duties of the Attorney-General: "This act limits me to questions of law propounded by the President and heads of departments; and to these limits I have made it a rule to confine myself, on the ground that in a Government purely of laws no officer should be permitted to stretch his authority and carry the influence of his office beyond the circle which the positive law of the land has drawn around him. (See also 1 Op., 211, June 12, 1818; 1 Op., 253, December 22, 1818.)

Attorney-General J. J. Crittenden, June 15, 1852, declines an opinion requested by a committee of Congress, on the ground of Attorney-General Wirt's opinion of February 3, 1820 (1 Op., 216), and says as to his duties: "Those duties are prescribed and limited by law, by his commission, and his oath of office. * * * To answer the questions you have been pleased to propose does not fall within the limits of the duty or legal power of the Attorney-General, but would be a wide departure from his appointed sphere of action." (5 Op., 561.)

Attorney-General Edward Bates, December 14, 1861, declining to give an opinion in answer to a resolution of the United States Senate requesting it, says that he would be "compelled to decline compliance with the request of the Senate, on the ground that in the absence of any statutory authority to give official opinions to the legislative department of the Government, the assumption of such power by the Attorney-General would be in violation of his oath of office, and of dangerous example." (10 Op., 164.)

Attorney-General George H. Williams, March 26, 1872, says: "I find that my predecessors in office have made numerous decisions to the effect that the Attorney-General is only authorized to give his official opinion upon a question of law submitted to him for that purpose by the President or the head of one of the Executive Departments. I do not think that the act 'to establish the Department of Justice' (16 Stats., 162) changes his rights or his duties in respect to his official opinions." (14 Op. Atty. Gen., 21.)

Attorney-General Williams, January 20, 1873, requested by committee of United States Senate for opinion on the construction of Choctaw-Chickasaw treaty, says: "I can not recognize the right of any committee of Congress to call for such an opinion for their use in matters of legislation; and if given for that purpose it would be entitled to no more consideration in Congress than the opinion of any other individual presumed to have a knowledge of legal matters. * * * My authority to give such opinions is confined by the law to matters which concern some departmental action of the Government." (14 Op. Atty. Gen., 177.) (Opinions cited 1 Op. 253, 335, 492; 2 Op., 499; 10 Op., 164; 12 Op., 544.)

DUTY OF ATTORNEY-GENERAL.

The Attorney-General is not authorized, by the law creating and defining his office, to give legal opinions at the call of either House of Congress or of Congress itself. His duty to render such opinions is limited to calls from the President and heads of departments.

Attorney-General Charles Devens, March 27, 1878, declines an opinion requested by resolution of House of Representatives, and says: "The authority of the Attorney-General to render his official opinion is limited by the laws which create and define his office, and does not permit him to give advice at the call of either House of Congress or of Congress itself, but only to the President or the head of an Executive Department of the Government." (2 Op., 499; 5 Op., 561; 10 Op., 164; 12 Op., 544; 14 Op., 17; 14 Op., 177, cited.)

It is not the duty of the Attorney-General to give opinions on questions of fact (Op. Sept. 11, 1852, 5 Op., 626; April 3, 1820, 1 Op., 346.)

The Attorney-General will not give an opinion on a case, submitted by the head of a Department, which is not pending in his Department and subject to his decision. (10 Op., 50, June 12, 1861; 10 Op., 220, April 2, 1862.)

The Attorney-General will not give a speculative opinion on an abstract question of law which does not arise in any case presented for the action of an Executive Department. (April 11, 1865, 11 Op., 189, see also July 20, 1868, 12 Op., 453; January 8, 1872, 13 Op., 568.)

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